United States Court of Appeals for the Second Circuit



APPENDIX

76-1307

In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee.

vs.

BERNARD L. GOLDENBERG,

Defendant-Appellant.

On Appeal from a Judgment of the United States District Court for the Southern District of New York.

APPENDIX

Volume I, pp. 1a-278a

MORTON BERGER

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Spring Valley, New York 10977
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UNITED STATES DISTRICT COURT (PF. 1a-3a)

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	DEDMADD *	v.s.		Bancroft	Littlefield
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				For Defendant	ERCER, ESQ.
			-0	A of Lurha	m Road
				tele: (91	ains, N.Y. 1 4) 948-590
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Title 26					
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-14-75	Filed indictme	ent.	OCCEPTINGS		1
28-75					
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12-75	No appearance	B/W ordered, Cour to Judge Gagliardi	t directs e	ntry of nor	and law in
10.00			for all pu	rposes.	Wyatt J.
-12-75	Bench warrant	issued.			1-1-1
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Judge	Gagliardi	Page 2	75 Cr.	385

DATE	PROCEEDINGS
01-30-76	White Plains, N.Y. 10607 tele: (914) 948-5908.
02-17-76	Filed warrant for arrest of deft. Bernard L. Goldenberg and marshal's return, warrant executed by U.S.M. Tornberg by arrest and arraignment of deft on 1-10-76.
02-18-76	
3-19-76	Condition of \$50,000. P.R.B. as cited 1-22-76 now amended as follows: Ball \$50,000. P.R.B. to be co-signed by one(1) solvent individual- with consent of AUSA Littlefield. Stewart, J.
3-22-76	Filed remand dated 3-19-76.
3-22-76	Filed P.R.B. \$50,000.
03267	
4-06-76	B. Goldenberg- filed remand dated 1-22-76.
6-06-76 6-07-76	Before Gagliardi, J.Jury trial begun, Trial contd.
4-08-76	" "
4-12-76	sentence 5-25-75 At 9:30 A.M. Garliardi I
	The state of the s
14-13-76 14-19-76 14-19-76	Filed Govts suppl.requests to charge. Filed Govt's Suppl.Requests to charge. Filed Govt's requests to charge.
04-20-76	motion to transfer extradition notice upon AUSA P. Salerno re:
	to NJ
04-20-76 14-19-76	Deft. (atty. resent) bail is contid at \$50,000 P. P. T. A. N.
- 15 - 10	signed by Mr. S. Judith Stemons and to Jo, 000 P.R.B. to be
Y	
* 44	is to report to the U.S. Atty. once a week in either N.Y. or California. Mrs. Simmons, is to modify the U.S. Atty, when and if she leaves the country shead of time. Gagliardi, J.
5-07-76	Filed transcript of record of proceedings dated 3-19-76 (before Judge Stewart)
604-76	Files transcript of record of rece dings, dated 21 22-76.
14-76	Bernard L. Colemberg-filed JUDCMENT # 76, 583 (atty. Morton Berger) Ct. 1- 2yrs, impr. 18:3651- SERVE (mins, remainder of sent. E.S.S. and FINED \$10,000, and the cost of prosecution, committed Ct.2-6 mons, impr. to run conc. wheept. on ct. 1. and FINED \$5,000.committed and the cost of prosecution. Deft. 12 continued on present bail until 7-1-75 at 9AM. Gagliardi J. issued all copies.
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RAYMOND F

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75 Cr. 385 Judge Cagliardi

Page 3

Date Order or Judgment Noted PROCEEDINGS Filed deft's notice of appeal from judgment of 6-14-76.
Mailed copies

INDICTMENT

(pp. 4a-5a)

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

BERNAID J. COLDENBERG,

Defendant.

INDICTAENT

75 cr.

APR 14 1975

The Grand Jury charges:

On or about the 15th day of April 1969, in the Southern District of New York, BERNARD L. GOLDENBERG, the defendant, who during the calendar year 1968 was married, unlawfully, wilfully, and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1968, by preparing and causing to be prepared, by signing and causing to be signed, and by filing and causing to be filed with the Internal Revenue Service, a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040, on behalf of himself and his wife, wherein it was stated that their taxable income for the said calendar year was the sum of minus \$3,244.00 and that no income tax was due and owing thereon, whereas he then and there well knew their joint taxable income for the said calendar year was the approximate sum of \$505,931.69, upon which taxable income there was due and owing to the United States of America an income tax or approximately \$349,517.24.

(Title 26, United States Code, Section 7201.)

COUNT THUC

The Grand Jury further charges:

On or about the 15th day of April, 1959, in the Southern District of New York, Beneared 5. Combinistic, the defendant, unlawfully, wilfully, and knowlingly did take and cause to be made, and did subscribe and cause to be subscribed a joint U.S. Individual Income Tax Return, Form 1040, for the calendar year 1968 on behalf of himself and his wife, which contained and was verified by a written declaration that it was made under the penalties of perjury, and was filed with the Internal Revenue Service, which said income tax return he did not believe to be true and correct as to every material matter, in that on the schedule showing profit (or loss) from business or profession, Schedule C to said Form 1040, his gross receipts were reported to be \$57,000, whereas he then and there well knew and believed his actual gross receipts were approximately \$597,000.

(Title 26, United States Code, Section 7206(1).)

Chranda & Jones

Paul J. CURRAN United States Attorney

MINUTES OF TRIAL BEFORE HON. LEE P. GAGLIARDI ON APRIL 6, 7, 8, 9, 12, 1976 and JUNE 14, 1976 UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK UNITED STATES OF AMERICA :Before: :HON. LEE P. GAGLIARDI, D.J., : and a Jury vs. BERNARD L. GOLDENBERG, : 75 CRIM. 385 Defendant. : New York; April 6,7,8,9,12, 1976 June 14, 1976 STENOGRAPHER'S MINUTES

1	UNITED STATES DISTRICT COURT
2	SOUTHERN DISTRICT OF NEW YORK
3	x :
4	UNITED STATES OF AMERICA, :
5	Plaintiff,
6	vs. : 75 Cr. 385
7	BERNARD L. GOLDENBERG,
	Defendant. :
8	: x
9	
10	April 6, 1976
11	BEFORE:
12	HON. LEE P. GAGLIARDI,
13	
14	District Judge And a Jury
15	APPEARANCES:
16	ROBERT B. FISKE, JR., ESQ.,
17	United States Attorney for the Southern District of New York
18	BY: BANCROFT LITTLEFIELD, JR., ESQ., Assistant United States Attorney
19	MORTON BERGER, ESQ.
20	Attorney for the Defendant
21	
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23	

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2	(In the Robing Room)
3	THE COURT: Are we ready?
4	MR. LITTLEFIELD: The Government is ready, your
5	Honor.
6	MR. BERGER: The defendant Goldenberg is ready,
7	your Honor.
8	MR. LITTLEFIELD: Your Honor, there are a number of
9	matters which I would just like to put on the record at the
10	beginning of trial, if that is possible, having to do with
11	discovery and other such.
12	THE COURT: If we can do this, we can do it in open
13	court. The defendant ought to be present.
14	MR. BERGER: He is here.
15	MR. LITTLEFIELD: Perhaps we ought to do it in
16	open court because I am going to hand out a whole batch of
17	exhibits.
18	THE COURT: We will do it in open court. I have
19	requests to voir dire. Have you seen them?
20	MR. BERGER: I think I have been handed them by Mr.
21	Littlefield.
22	(In open court)
23	THE CLERK: United States of America versus Bernard
24	Goldenberg. Government ready?
25	MR. LITTLEFIE : The government is ready.

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24 25 MR. LITTLEFIELD: Your Honor, there are a number of

MR. BERGER: Defendant is ready.

THE CLERK: Is the defendant ready?

matters which I would like to put on the record at this point and perhaps one or two legal questions which perhaps the government would like to raise at this point.

First, I would want to state that Mr. Berger has been given certain discovery in this case about six weeks ago, and additional discovery was -- I indicated to him would be available last Thursday. He has seen it this morning, your Honor. I would just like to put on the record what that is. That is a list of all the contacts which the government has had with Mr. Goldenberg, which include some 29 separate memos on the tax case and a list of his testimony before the Securities and Exchange Commission and the grand jury at the first Mastercraft trial. Mr. Berger has gotten all that material, as well as an index to all that material. He had it previously, but it is now put in order with an index. Additionally we have given Mr. Goldenberg a copy of the special agent's report in connection with this tax case. We have also shown him material, microfilm copies of material which was taken from Mr. Goldenberg when Mr. Goldenberg was arrested in California on January 8th or 9th of this year, your Honor. That is essentially blank checks and other documents. Mr. Berger has

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seen copies of that. I have also shown him the exhibits from the Mastercraft trial, the former trial, and a copy of the indictment from the former trial.

I have also given him a copy of the letter and memorandum from the S.E.C. referring the stock fraud, Mastercraft case, to the government back in 1971 at the time of the stock fraud investigation. This is all in the nature of pretrial discovery which either under Brady or whatever other obligations the government is hereby turning over.

Additionally, your Honor, I would like to hand up to the Court and to Mr. Goldenberg all the exhibits which the government will introduce during the course of the trial, together with a list of these exhibits.

THE COURT: Have you premarked them?

MR. LITTLEFIELD: They are all premarked. There may be some changes as we go along.

THE COURT: It is a good beginning, anyway.

MR. LITTLEFIELD: I am handing them up to the Court, together with an exhibit list, your Honor. Each is in a folder by witness, so that when the witness appears, if one just takes the folder relating to that witness, all the exhibits for that witness should be in that folder.

I am also handing the same to Mr. Berger, your Honor.

One of the reasons for this is that I hope that Mr. Berger will

lh/lf

have the chance to look at these anytime, perhaps, so that when they are offered during the course of the rest of the week, that if he has objections to them, at least he could brin; them up in advance of the day in court so that we could work them out, if possible, so that things will speed up in front of the jury, because there are a number of -- there are many checks, for example. I don't think there is any dispute about their admissibility, but I just want Mr. Berger to have them all. I might also point out that most of these exhibits were turned over to him along with all the other material about six weeks ago, but now they are in an order where he may find it more useful to go through them.

Additionally, we have the 3500 material for all the witnesses, and I can make that available to Mr. Berger now as well.

THE COURT: Anything else?

MR. LITTLEFIELD: Why don't we do the 3500 material durin; a break this mornin; after picking the jury.

The other point is a legal one, your Honor. Mr
Berger has indicated to me this morning that in his opening he
intends to go into the fact that Mr. Goldenberg was indicted
in 1971 and tried and acquitted at that time for the Mastercraft stock fraud case. The government's position, of course,
is, and is supported by any authority that we are aware of,

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that that -- that the acquittal in that case is not probative of any issue that the jury has to decide here, namely, is Mr. Goldenberg guilty of income tax evasion for 1968.

THE COURT: Where is your authority for the doctrine, Mr. Berger?

MR. BURGER: May it please the Court. You heard Mr. Littlefield when he started addressing your Honor. He stated that he had given certain exhibits, including the S.E.C. testimony on Mastercraft. The first Mastercraft trial. Now the way he referred to it as the first Mastercraft trial. Your Honor, there was only one Mastercraft trial. We are abto start the second Mastercraft trial today. The testimony of John Gluskin, volumes, out of the Mastercraft trial. He was the key witness against Mr. Goldenberg. He was the witness that stated that Mr. Goldenberg was his partner in crime, he was the witness that stated that Mr. Goldenberg set up a phony corporation for the purpose of getting his share of the proceeds cut of the Mastercraft securities violation. He is the witness that stated that the documents that show that the corporation that was set up was a legitimate corporation, that the funds it received were loans and were thereafter converted to stock interest, he was the one who said those were phony agreements. He testified during the Mastercraft trial. If the jury would have believed his testi-

mony, Mr. Goldenberg would have been convicted. Unfortunately, five years have elapsed since the Mastercraft trial, and perhaps unfortunately, also, Mr. Gluskin is now deceased. So the government intends to introduce into evidence his transcript of his testimony --

MR. LITTLEFIELD: Mr. Berger, as I told you this
morning, at this point the government will not introduce into
evidence the four and a half volumes of testimony by Mr. Gluskin.

It is very long and we think we can prove our case without
introducing it. If the time comes when you seek to introduce it
or when issues are raised that can only be rebutted by introducing it, the government will introduce it.

THE COURT: The government indicates now that on its main case the government does not intend to introduce it.

On its main case. He just said that. Haven't you --

MR. LITTLEFIELD: Yes. But if something develops during the main case, I don't know what it would be, but if it becomes -- if Mr. Berger's whole defense turns out to be where is Gluskin, then I would reserve the right to --

THE COURT: Where is Gluskin? We will say he is dead.

MR. LITTLEFIEID: We do have testimony by him where

Mr. Goldenberg's former attorney, Mr. Stillman, cross examined

him. That's the only -- I hope we don't have to do it because

I think it will take a day and a half to read it to the jury

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and I think it will be very dry. If we do have to do it, we will, at a later point, though.

MR. BERGER: If your Honor looks at page one of the government's trial memorandum, you will see point number 1, in 1968 Bernard L. Goldenberg assisted in the promotion and sale of the stock of Mastercraft Electronics Corporation.

Over \$1,200,000 was received as proceeds from the stock sale.

THE COURT: I read that whole thing.

MR. BERGER: There we go, right back into the Mastercraft trial, your Honor.

THE COURT: That doesn't mean he is going to read the record there. You mean to say that he can't go and show that \$1,200,000 was deposited in a certain account?

MR. BERGER: They can't go ahead and show that \$1,200,000 was deposited in a certain account after --

THE COURT: Let me suggest this. We are not going to reach your point unless that proof comes in. I don't know where in the rules it provides for the admission into evidence of a prior equivalent in another case. Show me in the rules where such is provided.

MR. BERGER: May I be heard on that point?

THE COURT: Give me the rule number.

MR. BERGER: I don't have the rule number.

THE COURT: Is there such a rule?

MR. BERGER: If the matter --

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THE COURT: Is there such a rule?

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MR. BERGER: I don't know. As a matter of common justice and interest, if the government is going to rely on

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the testimony of Mr. Gluskin after waiting five years to

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indict Mr. Goldenberg and after waiting until Mr. Gluskin

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is dead, and that jury has to hear read to them the testimony

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of Mr. Gluskin --

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THE COURT: He says he is not going to read it now,

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Mr. Berger. Why do we waste time on it?

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MR. BERGER: If he is not reading it, I reserve the

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right to open, your Honor. If the government goes ahead and

reads that testimony, at that time I feel I should have a

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right to open.

initially?

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THE COURT: You mean you are going to waive opening

reservation that in the event that the government introduces

testimony regarding the Mastercraft case, that I shall have the

MR. BERGER: I will waive it initially, with the

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THE COURT: What do you say, Mr. Littlefield?

right to open at that time.

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MR. LITTLEFIELD: Of course there is goin; to be testimony about the facts of the Mastercraft case because

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that's how the money came to be in Mr. Goldenberg's pocket. So

I think -- I don't see how he can reserve the right to open in lieu of that. Of course there is going to be testimony of that sort.

MR. BERGER: Your Honor, the kind of testimony
I am speaking of --

THE COURT: Is merely the reading of the record of Gluskin's testimony?

MR. BERGER: Right, and fraudulent conduct on the part of Mr. Goldenberg. If the government offers a fraudulent type of conduct on the part of Mr. Goldenberg on a case which has already been adjudicated and upon which he has been found not guilty, then in effect as to that part of the case I am facing double jeopardy, and I have a right to go ahead and tell that jury that they have not seen the witnesses, they have not heard the case, they are not in a position to judge what a prior jury found Mr. Goldenberg not guilty of.

THE COURT: If you show me authority, I will listen to you. Right now I don't see that there is any basis for that whatsoever. If you show me authority to that effect, why, I will absolutely consider it.

MR. BERGER: In addition to that --

THE COURT: I am not going to permit you to open later on in the case. You knew this was going to be an issue in here. I don't understand why there isn't some kind of

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MR. BERGER: Perhaps it is a case of first impression, your Honor. It seems that we have had them before.

THE COURT: All right, we get cases of first impression a lot of times.

MR. BERGER: In addition to that, your Honor, at this time I'd like to make a motion which I wish your Honor would reserve decision on to dismiss the indictment based upon the fact that there have been laches on the part of the government between the date that it discovered all of the facts relevant to this case and the date of the indictment, due to the fact that key witnesses have in the interim period become unavailable either through death or by moving. The reason I ish that my motion -- the decision on my motion be reserved is I believe that during the trial of this case these facts will be developed. They are not facts which I am in a position to set forth in an affidavit. These are facts which will develop as the case goes on and as evidence is introduced and as we have to rebut.

THE COURT: Let me suggest this. The motion day is long past in this case.

MR. BERGER: There is no doubt that the motion day has long passed. But the discovery of the facts upon which a motion might be predicated has not long passed, and those facts

may come out during the trial. I believe your Honor in his discretion has the right in the interests of justice to see that there is not unfairness against this defendant to reserve decision on that motion and act upon it at any time that he feels the facts warrant it be acted upon.

THE COURT: I can't prevent you from making any motions, but the motion right now is not timely. Whatever subsequent facts develop, why, we will consider them in the light of what develops. Anything else?

MR. LITTLEFIELD: The Court has ruled, then, and Mr. Berger is so instructed, that he may not mention the fact of the acquittal?

THE COURT: He doesn't intend to mention it in his opening statement, certainly.

MR. BERGER: I intend to reserve my right to open. If the government does not open the door, then, of course I have waived my right to open. If the government does open the door, then I suppose that I have reserved that right so that I can open and address the jury with regard to what the evidence will prove on the defendant's case.

THE COURT: Let me suggest this to you, your not having given me anything so far by way of authority, it being my consideration that under general principls of law an acquittal in another case is not admissible in this particular case, I would.

upon objection which has already been made and upon objection to any such statement in your opening, would so instruct the jury. I don't see any reason that I am going to -- I don's see any reason now why you don't either plan to open or waive your opening. That's the way we proceed in here. The government opens. The defendant can either open or not open. I don't see under the circumstances of this case as they have been outlined to me and from what I can see that there should be any reason thy I should depart from that rule and permit you to open at the conclusion of the government's case.

MR. BERGER: At this time I have not made up my mind whether I intend to open. When Mr. Littlefield gets done, I will either stand up or not.

THE COURT: I will as you if you waive opening and I will ask you in front of this jury whether you intend to make any statement to the jury or not. I tell the jury in my general instructions, as you know, that the defendant doesn't have to say anything, he doesn't have to open, he doesn't have to make any statements.

MR. LITTLEFIELD: I think that's all. So Mr.

Derger will not mention in questioning the witnesses or in any
form of advising the jury that there was an acquittal, as I

understand your ruling? I am afraid that it is going to come
out and then the cat is out of the bag, unless there is a very

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clear instruction to Mr. Berger at this point, at least, subject to his bringing forward further material, that he is not to mention it either in the opening or in the cross examination of the witnesses.

THE COURT: I have indicated as much as I have the things on the record. I don't believe there is any authority to make any such statement. If it is made, I will take the appropriate measures at the time that it is made, including, perhaps, some other circumstances that may be taken into consideration.

How long will this case take?

MR. LITTLEFIELD: I think the government's case will take three days, your Honor Sometime Friday, we would be through.

THE COURT: When will you have requests to charge?

MR. LITTLEFIELD: Hopefully tomorrow, your Honor.

If not, Thursday morning.

THE COURT: We will call for the jury.

(Recess)

(Jury not present)

THE COURT: What can we do about some of these exhibits? Are we going to have any difficulties? Have you had an opportunity to look at the list, Mr. Berger?

MR. BERGER: I haven't looked at the exhibits just

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handed to me in this order, but I will have no problem with any exhibits, as long as there is a proper predicate before each one is offered into evidence.

THE COURT: Is there any problem about number 1 here now?

MR. BERGER: That could be very prejudicial, your Honor. No problem.

THE COURT: I'd like to get as much marked in as we could beforehand to save the necessity of going back and forth. Item number 1, you have no problem. What about item number 2?

MR. BERGER: I have a problem with that. I don't see what the 1969 return has to do with 1968.

THE COURT: What does it have to do --

MR. LITTLEFIELD: This will show that he did not report this income in 1969 either, so that if that were to be a feeling the jury had, he didn't report it at a later date, he never reported it.

THE COURT: I don't see that in the first instance that either the '69 or '70 returns right now themselves are admissible. If they do become -- all right. What about the Superior Plans, Inc., tax returns for 1969?

MR. BERGER: I don't think Mr. Goldenberg has been charged with anything in regard to Superior Plans.

THE COURT: Superior Plan certificate of incorporation?

MR. BERGER: No objection.

THE COURT: Number 9 will be received in evidence.

Filin; receipt?

MR. BERGER: No objection.

THE COURT: 9A will be received.

What about 9B?

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are doing.

(Pause)

THE COURT: 18, was that signed by the defendant?

MR. LITTLEFIELD: Yes, it is.

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2	MR. BERGER: Based upon that representation
3	THE COURT: Make sure about it.
4	MR. LITTLEFIELD: Let me make sure there is not a
5	typographical error here. I thought we already had that.
6	THE COURT: Look at number 11.
7	MR. LITTLEFIELD: 11 is the Central State Bank.
8	THE COURT: Number 18 is the same?
9	MR. LITTLEFIELD: No, One is the front and one is
10	the back. The reason is that they are going to be offered
11	through different witnesses.
12	THE COURT: If it is approved, you don't have to
13	offer it through different witnesses. You are going to offer
14	11 and 18 at the same time? Assumin; there is no
15	objection to it.
16	MR. BERGER: I object to 11. It doesn't have
17	any client's signature.
18	THE COURT: What about 18?
19	MR. BERGER: No objection to that.
20	THE COURT: 18 is in and 11
21	MR. LITTLEFIELD: To be accurate on this, your
22	Honor, it is the front and the back, so I think that probably
23	the suggestion that it be marked as one exhibit is a good

his, your that probably is a good suggestion, so that if Mr. Berger objects he will object to the whole thing. I don't see how we can offer -- let's cross

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2	out Exhibit 18, your Monor, and make the front and back 11 and
3	114.
4	THE COURT: You wouldn't object to 11A but you will
5	object to the 11.
6	MR. EFRGER: If it is part of one document, I
7	certainly don't -
8	MR. LITTLEFIELD: Let's make it all one. The exhibit
9	is 11, signature card.
10	THE COURT: He objected to that.
11	What about 19?
12	MR. BERGER: Just for the period of time involved.
13	THE COURT: What are you going to run through on
14	that, 1968?
15	MR. LITTLEFIELD: I can tell your Honor when the
16	account was closed, but we are certainly going to run through
17	whatever there is from that account from Superior Plans, we will
18	offer.
19	THE COURT: We will have a question of the admissibility
20	of the evidence. Same thing with 20A to AZ.
21	MR. BERGER: Yes, sir.
22	THE COURT: 21, is the defendant's signature on
23	21?
24	MR. BERGER: No objection, your Honor.
25	THE COURT: 21 will be received. Deposit slips with

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Chelsea, we have got the problem of time, bank statements? MR. BERGER: Time, your Honor.

THE COURT: With respect to time, are you going to require a witness here to prove the authenticity of these or not, or just the question of the time?

MR. BERGER: Can I give you an answer on that? THE COURT: Certainly. Let Mr. Littlefield know, actually, and you can both inform me. It is more important that he know so he knows whetherhe has to bring the witness in or not.

Allograph, I don't know of any reference to it. MR. LITTLEFIELD: Part of the five hundred plus thousand dollars that went into Superior Plans was used by Mr. Goldenberg for himself to buy stock in Allograph.

THE COURT: What about 26?

MR. LITTI EFIELD: That's the tax computation.

THE COURT: You are going to need a witness here?

MR. BERGER: I want to cross examine the witness.

MR. LITTLEFIELD: I have these charts which I don't think I have handed around, but I have copies of them.

THE COURT: Of course, they come in, assuming they are accurate summaries, they are admissible. Let's go through this again. These you are going to let the clerk mark into evidence either before you go to lunch or come back and hand

them to him and let him do them while you are out to lunch so they are all ready. Exhibits 1, 9, 9A, 10, 12, 13, 14 and 21.

MR. BERGER: That's right, your Honor.

THE COURT: If those are marked in evidence now, it might save a few minutes. Anything else that we can discuss or you can arrange on or stipulate to?

MR. LITTLEFIELD: Just so there is no question of surprise, I intend to use in my opening one chart which just essentially lists - it shows the flow which the government will show in terms of the money. I just want to tell Mr. Berger that at this point, and the Court, so there is no argument about it when we start the opening. It is not in evidence at this point, but it is merely for the jury's and my assistance in pointing out what the government claims in this case. It is the same as using a chart in summation.

MR. BERGER: Your Honor, one picture is worth a thousand words.

THE COURT: Just be prepared to have a camera down here to take a picture of it.

MR. LITTLEFIELD: I have a copy of the chart. I will hand it up to the Court.

MR. LITTLEFIELD: I am going to put the chart on the blackboard. If it is too far away for them to see, I might ask

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2	permission to move it up and then hand the Court and Mr.
3	Berger and Mr. Goldenberg copies, if they couldn't see it.
4	I think with the first chart, there will be no problem.
5	Later charts may have figures which if they are way over there
6	a jury in the back can't see, in which case I will hand copies
7	to the Court and Mr. Berger.
8	THE COURT: But not to the jury?
9	MR. LITTLEFIELD: Not to the jury.
0	THE COURT: That's permissible.
1	THE COURT: You are going to move the desk around?
2	If you want to move your desk over here and face this way,
3	we would move the other desk in the middle of the room, and
4	then put the rostrum right down there at the end of the jury
5	box so you can look right at the witness. That's the way
6	we did it the last time.
7	MR. LITTLEFIELD: I have no problem with that. Does
8	your Honor want government's table
9	THE COURT: L-shaped.
0	(Luncheon Recess)
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AFTERNOON SESSION

2:25 p.m.

(In open court - prospective jurors not present.)

(Government's Exhibits 1, 9, 9A, 10, 12, 13, 14 and
21 were received in evidence.)

asked this jury to be back here at two o'clock and they were all here except for one. I'd like to start on time. I think it helps the jurors understand what we are doing here, it makes them a lot more comfortable if we tell them to be here on time and we are here promptly. If you have any applications to make to me, let my clerk know and I will come down early. I have been sitting in my chambers when I could have come down before this to handle that matter. I wish you wouldn't encroach on the jury's time. It is difficult enough for them to sit on jury service and then hold them up for fifteen or 20 minutes, when it can be avoided. If you have something to take up with me in the absence of the jury, let's do it on our time rather than the jury's time.

MR. LITTLEFIELD: We will do in at the first recess.

THE COURT: If it has to be done now, we will do

it now.

MR. LITTLEFIELD: We have given them the 3500 material in the first place for the first two witnesses, Mr.

Shapiro and Mr. Leeds, and Mr. Leeds raises a question, your Honor, that he was a co-defendant of Mr. Goldenberg's at the first trial. He was also acquitted. I don't think we will get to him before the first recess, so perhaps we should discuss the question of that, whether Mr. Berger can go into that.

THE COURT: I can't hear you because Mr. Berger

MR. BERGER: I am sorry, your Honor.

MR. LITTLEFIELD: Perhaps we could wait until the first recess to go into the question of whether Mr. Berger will attempt to elicit, I don't 'mow whether he will or not, Mr. Leeds -- the fact of Mr. Leeds' indictment and his acquittal, because the government's position as it is with Mr. Goldenberg is that those are not matters which -- Mr. Leeds is a witness, so it is not a conviction, therefore it is not material properly used to impeach him, and, secondly, as with Mr. Goldenberg, that is a side issue which is not what the issue before the jury is. I just wanted to bring that out at this time, your Honor.

THE COURT: Bring the jury in.

(The prospective jurors entered the courtroom.)

THE CLERK: Will the jury panel please stand.

(Panel of twelve prospective jurors and two

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cospective alternate jurors were duly sworn.)

THE COURT: Members of the jury, before we proceed with the trial here, I thought I might make a few preliminary observations to you and also indicate to you what our normal schedule will be. The case will proceed as follows. The government will make an opening statement outlining to you what facts it expects to prove during the course of this trial. Let me tell you right from the outset that nothing that counsel, that is the attorney for either side in this case, may say with respect to the facts and nothing that the Court may say th respect to the facts is to be taken in substitution for your judgment as to what the facts are as it is elicited from the witnesses and from documentary proof that's introduced here. Counsel are not testifying, they are not sworn in the case, they are not witnesses. Whatever they say is not testimony. As I said, the government will make an opening statement outlining what it expects to prove. The defendant may or may not make an opening statement. In a criminal case there is no obligation upon the defendant to present any evidence or to do anything at all. As I told you before your selection as jurors, in a criminal case the defendant has pled not guilty and is armed with a presumption of innocence.

It is the obligation of the government in order to obtain a conviction to establish to your satisfaction beyond

a reasonable doubt the guilt of the defendant. So in the criminal law, the defendant has a obligation to do anything. However, if the defendant domake any opening statement, again, it is not testimony, but it should outline the facts that the defendant may or may not rely upon in connection with his case. After the opening statements are concluded, the government will put on witnesses. The party putting on a witness examines that witness and then there is a right on the other party if they so elect to cross examine, to examine that witness to elicit certain other facts from that witness.

After the government has completed the presentation of its evidence, again, the defendant may or may not present any evidence. In the defendant does put any evidence or any witnesses on, the defendant's attorney will examine that witness first and then he will be cross examined by the government's attorney. At the conclusion of the entire case, counsel will have the opportunity again of addressing you. The government will sum up first and the government's summation will be or should be confined to a review of the facts that they believe have been established here and the reasonable inferences that you should draw as reasonable persons from the facts that they believe were established.

The summation of defense counsel will then take place, or it may not take place: -- as I say, the defendant has no

obligation to do anything. If the defense does sum up, there will be a short rebuttal by government counsel. Then I will instruct you on the law. As I told you earlier, until we have reached that point you will not be in a position to decide this case, so don't make up your mind about the case until you have heard all the evidence and you have heard the instructions from me.

One of your principal functions in here as a juror will be to determine the credibility of the witnesses that are presented here. You go about that pretty much the same way you go about determining whether you are going to believe or disbelieve the credibility of a person whom you may meet for the first time either parally, in business or otherwise. You size that person up, see how they behave, their manner, demeanor, whether what they say has the sound of truth to it, and whether or not what they say is either supported or contradicted by other testimony or other evidence in the case. That will be one of your principal functions during the course of this trial, to observe the mitnesses and determine the credibility of those witnesses.

During the course of the trial there will be times when counsel will object to a question that has been asked. When counsel objects to a question, it is my function to rule upon whether or not the witness should be permitted to answer.

In performing that function, I am passing upon a question of law only and not a question of fact. Don't keep track of the number of times I rule in favor of one side or the other. I am merely making a legal determination as to whether or not a witness should be permitted to answer. You should not draw, in the event that I sustain an objection to a question, any inference as to what the witness might have answered had he been permitted to answer the question or should you draw any inference by reason of the fact that the question has been asked or the wording of the question. A question gains meaning only by reason of an answer given to it, and not otherwise. So when I sustain an answer to a question, you are not to consider that in any way at all, that question asked, for any purpose whatsoever. Sometimes a witness blurts out an answer before I have had an opportunity to rule or even before counsel have really had an opportunity to object. If an objection is made and I strike the testimony of that witness, you are to consider that you never heard that testimony at all. It is not a part of this case if it is stricken from the record. No remark of mine, no statement, no conduct of mine, is to be considered by you in any way as to how I think you should decide this case. It is not my function to decide this case, it is not my function to determine the credibility of the witnesses. That is your function and yours alone. In every

way possible I will attempt to conceal any feelings that I 2 may have about a witness or a particular witness' testimony. 3 So don't by reason of any grimace or facial expression or otherwise of mine take it as any reference to a witness. I may 5 6 be involved in something else at the time the question is asked 7 and I am trying to conceal how I feel about it. Again, don't 8 let anybody discuss the case with you. Don't you discuss it 9 with anybody nor among yourselves until, as I say, I tell you 10 that it is proper to do so. I have certain rules of conduct 11 of a case that are peculiar to me. I insist that counsel 12 be present in their seats and seated when the jury files in 13 and when the jury files out and they are to remain in the 14 courtroom at the conclusion of the morning session and at the 15 conclusion of the evening session until you have gotten on these elevators and gotten out of the courthouse. 17

Counsel are not permitted to talk to the jurors at all during the course of the trial. If they may pass you in the corridor and ignore you, those are under my instructions, and that's the way it should be. You just completely isolate yourselves from counsel in every way. When a witness is being sworn, I insist that everybody pay attention to the administration of the oath to that witness. You remain seated and the witness will be sworn with the full attention of everybody focused on the witness who is being sworn.

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There may be times when counsel in connection with their objections may wish to address the Court in argument as to the soundness of my legal position when I have ruled on a question. I suggest to counsel merely that they refer to me, if they feel that I have misinterpreted an evidentiary problem. that they refer me to the particular rule of evidence which is involved and I will determine whether or not the objection is well taken or not. In the event that counsel feels that it is urgent that they speak to me about a ruling, why, we may have a little conference here right at the judge's bench. I discourage this means of proceeding, but rather than have you file out and hear argument in your absence, why, we may Tave a conference or two here. I like to keep those to a minimum and not have them take place. My purpose in this is merely that you hear the facts and not arguments on the law, and so forth, that might interfere with your being able to separate one from the other. If counsel have felt that any ruling I have made should be examined in more detail, at the next recess, why, you call it to my attention and we will hear it in the absence of the jury, and if necessary we will call a witness to take the stand, and if I decide that I should reverse my ruling, we will get the witness back on here so the witness may be permitted to answer, if I have sustained an objection to a question.

2 As for time, I like to insist on promptness. I think you like to be prompt, you are here performing a very 3 important function, and if you are on time, you expect us to 4 5 be on time. I certainly expect everyone connected with this 6 case from now until its conclusion to be here promptly. 7 Our usual court day commences at 9:30 in the morning, so you 8 will be here before 9:30 and counsel are directed to be here 9 before then, we will proceed at 9:30. We will have a mid-10 morning recess, give you a chance to stretch your legs. Those 11 of you who must have a cigarette, why, you can have it at the 12 recess. We will go until about 12:45 and then take an hour 13 and fifteen minutes for lunch. It is difficult to get lunch 14 around here, the eating facilities are not that good, so we 15 are giving you more than the hour off. We will have a mid-16 afternoon recess and then generally go until about 4:30, 17 quarter to five in the evening, sometimes even a little bit 18 later if we have to get rid of a witness whose testimony may 19 be concluded within a short time thereafter. With respect to 20 your getting here at 9:30 in the morning, if you have left your 21 house in sufi cient time to get here by 9:30 or a little bit 22 before, that's all I request of you. I am a commuter myself. 23 I know that sometimes the means of transportation and the public 24 transportation facilities, for one reason or another, get 25

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

clogged or they have delays, and so forth. If you are in the

middle of a subway on your way down here and it stops and there is something that is not your fault, don't get upset that I am going to be irritated or angry with you, as long as you have left in plenty of time to get here. So don't panic if you have done that and you are stopped or prevented from getting here on time because of conditions that are not within your control.

I have scheduled other matters from past months, I usually have conferences at nine ciclock in the morning, sometimes they run a little bit beyond 9:30, but we will start as close to 9:30 as we can. All other matters that I have that have been scheduled I try to put off until late in the afternoon so that I can take care of them after we have concluded our daily activity here in court. If at any time any of you become uncomfortable, we will try and open the windows or close them, adjust them to suit your convenience, and if at any time any of you in the jury box has a sudden emergency, why, you just raise your hand and let me know and we will try to attend to it.

I believe that's all I have to tell you about now.

I think that gives you pretty much an idea of how we are going to proceed here. Your undivided attention to this case will be what is required as we proceed here.

Mr. Littlefield.

(Pause)

THE COURT: Members of the jury, Mr. Littlefield

has put on the blackboard a chart that is not in evidence.

It may or may not go into evidence. If it does, fine. If

it doesn't, you are to disregard it. It is merely a means of

trying to explain to you certain things that can be explained,

he believes, in a manner with the assistance of this chart

as to what he expects to prove. Again, this is not in evidence,

it is merely an assist in trying to explain to you what the

MR. LITTLEFIELD: Thank you, your Honor.

government expects to prove in this case.

May it please the Court, Judge Gagliardi, Miss Gray, the forelady of the jury, Mr. Berger, Mr. Digricoli.

My name is Nick Littlefield, at the judge has introduced me earlier, and I have the honor of representing the government in this case. As the judge has indicated, this is a criminal case. It is a case involving two counts, two charges. The first count in the indictment charges that the defendant, Bernard L. Goldenberg, sitting to the right at the second table, did for the year 1968, on or about the 15th day of April, 1969, which is when, as you all know, we file our tax return in April of the year after for the year before, who during the calendar year 1968 was married, unlawfully, willfully and knowingly did attempt to evade and defeat a large

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part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1968 by preparing and causing to be prepared, by signing and causing to signed, and by filing and causing to be filed with the Internal Revenue Service a false and fraudulent joint U.S. individual income tax return, form 1040, on behalf of himself and his wife, wherein it was stated that their taxable income for the said calendar year, 1968, was the sum of minus \$3,244; ier words, on the return it is claimed that there was a loss, and that no tax was due and owing thereupon, whereas he then and there well knew the joint taxable income for the said galendar year was the approximate sum of \$505,931.89, upon which taxable income there was due and owing to the United States of America an income tax of approximately \$349,517.24. You don't have to remember these precise figures. What the government is required to prove is that there was a substantial amount of tax due and owing which he did not pay as far as this first count is concerned.

The indictment charges a particular sum, but you don't have to find that particular sum, and I think as we go through the proof, we are not sure exactly how much it is going to show to the nearest dollar. So it is a substantial amount of tax due and owing which the government must prove in connection with this first count. We must also prove in connect-

tion with this first count that Mr. Goldenberg made an affirmative attempt to evade his taxes, and you can do that, as the Court will instruct you, by filing an income tax return which you know to be false, by signing it, by having it prepared; thirdly, that he did this willfully, that he knew what he was doing, that he intended not to pay the tax that he was required to pay. Those are the three elements, and that's the

first count. Income tax evasion, count one.

Count two refers to the same year, 1968, and it is slightly different in that it says the 4. Goldenberg knowingly did make and cause to be made and did subscribe and cause to be subscribed a joint tax return, form 1040, for the calendar year 1968, on behalf of himself and his wife, which contained and was verified by a written declaration that it was made under the penalties of perjury.

You all will remember, I think, since it is even the season now, we have all been looking at our tax returns, it says made under the per aties of perjury when you file a tax return and sign it.

Returning to the indictment now, which said income tax return he did not believe to be true and correct as to every material matter in that on the schedule showing profit or loss from business or profession, that's Schedule C to said Form 1040, his gross receipts were reported to be \$57,000,

whereas he then and there well knew and believed his actual gross receipts were approximately \$597,000. So the difference between the first count and the second count, the second count is just filling a false return. In connection with that count, the government does not have to prove a particular or substantial amount of tax due and owing. It is a false return. The first count is evasion of income tax, the second count is filling a return which you know to be false. They both apply, of course, as I have said, to the same year and the same count -- the same year, however, in the same tax return. So that is the indictment.

As the Court has instruct you, there are those two counts, and when you deliberate at the end after all the evidence is in and the arguments of the lawyers are concluded and the instructions of the Court, you will reach a verdict on two counts, two separate counts. The purpose of this opening is to explain to you what it is that the government intends to prove during the course of this trial, because witnesses as you undoubtedly know, if you followed trials before or have seen them on television, witnesses can only testify as to what they know about from the beginning of when they know about something to the end. So we have one witness who testifies from beginning to end and then another witness who testifies from beginning to end and then another one, and so it

may be hard for you to piece it altogether because we have all these different witnesses telling you about different parts. You can't sort of say on the first day of 1968, and then bring in every witness who can testify about that day and then go to the second day and bring everybody back. It all goes from beginning to end, beginning to end, by witness. So the purpose of the opening is to give you sort of a road map, to tell you what it is the government that prove, so you will be able to keep your eye on the ball as the testimony comes in and not be too confused.

Because it involves a substantial amount of money and it involves corporations, it involves the sale of stock, it involves debentures, it involves some other words which some of you may not be familiar with because you are not familiar with financial matters, I am going to try to break this down into the simplest possible way I can to explain it so that you will be able to understand what it is the government will prove. Some of you who are more familiar with business matters, I hope you will excuse me if I go into greater detail than you might think is necessary for you to understand exactly what the transactions are that are involved here, because the government's proof, we contend, will show a complicated scheme by which Mr. Goldenberg was able to end up with access to approximately over \$540,000 out of this corporation

Superior Plans, and it is not your sort of average situation where somebody may have a job at a store and he doesn't report all the income he earns and it is just a question of he didn't report all his income. Here the transactions, the government contends, are camouflaged through these corporations, so that's why I want to explain to you exactly the flow of money and what it is that you have to understand here.

As Judge Gagliardi has instructed you, this chart is not in evidence at this point. I have it here only so that I can explain to you again how it is that the government contends this money ended up in Mr. Goldenberg's possession, in his control, on which he never paid income taxes. Can you all see this or should I move it closer?

JUROR NO. 3: Closer, please.

MR. LITTLEFIELD: Your Honor, may I move 1t?
THE COURT: Yes.

(Pause)

MR. LITTLEFIELD: This is what the government's proof will show, that there was a sale of stock in the corporation Mastercraft. That's really the first name you have to remember and the first corporation you have to remember Mastercraft. There was a complicated merger, two companies joining together, before this first corporation came into existence, as far as you will have to know, but

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don't worry about that. That's not really directly relevant to this, so you won't have to understand about the merger. You will just have to understand that there was stock sold in Mastercraft, a substantial amount of stock was sold. The money from that stock sale was deposited in an account called the Gluskin special account. The Gluskin special account. So we have the proceeds of the stock promotion, the stock sale, going into this Gluskin special account. From the special account \$540,000 was paid to a corporation called Superior Plans. Superior Plans, the government contends, was set up by Mr. Goldenberg and his lawyer, Mr. Leeds, by Mr. Goldenberg and Mr. Leeds -- you will remember Mr. Goldenberg is the defendant, Mr. Leeds will testify, this corporation was set up, the government contends, at Mr. Goldenberg's direction so that he could have a way of funneling the funds which he was going to get, the \$540,000, from this stock promotion through to him. So the Gluskin special account. checks were made out to Superior Plans. For example, Superior Plans didn't exist until the day before the first amount of money came from Mr. Gluskin's account. Secondly, there was no legitimate reason, the corporation had no business potential, it had no assets in it of any kind. So what happened? It was set up and the money immediately went into it, this corporation. Mr. Goldenberg is the president, he is the only

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member of the board, he is the only person who can sign checks. He sets it up in order to get a way that the funds can be funneled through from this stock promotion to him at the end. The money comes into Superior Plans in checks. What happens the minute it gets into Superior Plans? It is withdrawn by Mr. Goldenberg, well over \$400,000 is withdrawn by Mr. Goldenberg from this corporation Superior Plans, essentially withdrawn and converted into cash by him. What he would do is. the government contends, make checks out on Superior Plans payable to himself or payable to cash, he would take them to the bank and have the bank issue bank checks, and then he would take the bank checks to the neighborhood check casher and the check casher would turn these bank checks into cash. So Mr. Goldenberg took substantially over \$400,000 of this Superior Plans money and took it in cash, essentially. The rest of it up to \$555,000, he paid out in checks. For what purpose, we don't know. Certainly no purpose that had anything to do with Superior Plans As we go along, we will follow the whole bank account of Superior Plans, and you will see where all these checks went from Superior Plans, a total of \$555,000 out through Bernard Goldenberg, the man signing the checks, for what purpose we don't know. That, then, is essentially the overall outside parameters of this case. Mastercraft stock promotion to Gluskin special account, \$540,000

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2 to Superior Plans, you can see that more was withdrawn than 3 was actually in. There was additional deposits made into 4 Superior Plans, we don't know where that money came from. 5 We know that \$540,000 came from this stock sale. \$540,000 6 from Superior Plans out through into Mr. Goldenberg. That's 7 the money that Mr. Goldenberg ended up with in cash, over 8 \$400,000, and the rest in checks for whatever his own personal 9 purposes were, and that's the money that the government contends 10 was substantial money on which he did not pay tax, which he 11 has to have paid tax on. You can't set up a corporation to 12 get money and funnel it through that and avoid paying your 13 taxes. That essentially is what you have to keep your eye on 14 in this case, this flow of money out to Mr. Goldenberg. 15 That's what the government contends the proof will show, that 16 you will be satisfied at the end that the money did go through 17 like this, that Mr. Goldenberg did end up with over \$400,000 18 in cash, and that the rest of it he did end up paying for what-19 ever his own purposes are, we don't know.

Again, remember the government doesn't have to prove a specific dollar amount of tax due and owing. It must be a substantial amount. We don't have to say, "We prove \$508,000 or \$507,000," because we just don't know down the line what the proof is going to show beyond what I have shown here. I ask you to keep that line, that flow in mind, through-

SOUTHERN DISTRICT COURT REPORTERS. U.S. COURTHOUSE

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out this trial. If you do, and if you pay careful attention to the witnesses who will be sitting here giving their testimory, to the exhibits, there will be a lot of exhibits in this case, there was something like 45 checks that went into Superior Plans to make up this \$540,000, and there must have been, oh, boy, I don't know how many we are going to get, we will probably get 75 checks that will be introduced to get the money out to Mr. Goldenberg, so there are going to be a lot of exhibits, and you will have to pay attention as those exhibits are offered into evidence.

There may be some agreements by counsel. Those are the three kinds of evidence, testimony from the witness, exhibits and stipulations. What I say is not evidence, what Mr. Berger says is not evidence. The witnesses, the exhibits and the stipulations. Pay attention to those items. If you do, the government is sure that both sides will have a fair trial in this case, and that's what this is all about, after all, a fair trial for both sides.

Thank you very much.

MR. BERGER: May it please the Court, Judge Gagliardi, Mr. Littlefield, ladies and gentlemen of the jury:

I represent the defendant Bernard Goldenberg.

Basically I am going to try to give you a road map as to what

I think the evidence is going to show in this case. The first

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thing we have to remember is that this is an income tar evasion case. This isn't a money evasion case. This isn't a property evasion case, this isn't a cash evasion case. This is an income tax evasion case. Let's suppose, going to this chart, for some reason proceeds of a stock promotion went to Gluskin special account. Let's suppose that \$540,000 goes to Superior Plans. There are many ways that \$540,000 can go to Superior Plans. For example, if you own a home and you go to a bank and you mortgage it, you borrow \$50,000, have you earned \$50,000? No. You have borrowed \$50,000.

If you go to a friend and he gives you \$50,000 to go into business, he wants a part of your business, have you earned \$50,000? No. There has been a capital investment in you, in your company. So what you have got to bear in mind is the fact that money goes from the proceeds of a stock sale from Mastercraft to Gluskin into Superior Plans is meaningless unless the evidence shows beyond a reasonable doubt that that money was earned by Superior Plans. It has to be earned. It's got to be income.

I believe the evidence will show that Mastercraft was involved in a stock promotion and that Mastercraft took in in excess of \$1,200,000 as a result of that stock promotion. I believe that the evidence will show that Mastercraft was able to accomplish this promotion as a result of conduct by one

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John Gluskin, an attorney, a man who was an attorney since 1925, who had close to 50 years of law practice behind him in 1968 when he was representing the Mastercraft Company, and an attorney by the name of Leeds who was representing a company called First Standard.

What happened, I believe the evidence will show, is that Mastercraft was in the electronic import business. They imported radios, record players, recorders, from Japan. They distributed those record players and recorders and other electronics equipment throughout the United States. They needed money, needed money. They were in debt over their heads to the factors, although they had a substantial business, as far as sales. I think the evidence will show that their sales were not profitable. They needed money and they needed a new product. I think the evidence will show that a man by the name of Al Dayon, who was president of Mastercraft, placed an ad in the newspaper, a blind ad, seeking the help of another company, a company that either could give him a new product or perhaps cash or means of acquiring cash. I think the evidence will show that as a result of that ad Al Dayon met a company called First Standard, and First Standard had the rights in a new type of video tape recorder, a tape recorder which didn't require video tape to operate, but required audio tape, the type of tape that we use on our ordinary audio

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video tape. Al Dayon became very much interested in this tape recorder. He decided that he wanted to obtain the exclusive rights to import that tape recorder and distribute that tape recorder. In order to get those rights he decided to merge with a company called First Standard, the company that had those rights. First Standard was a company whose stock was bein; publicly traded over the counter. It was a company that was represented as financial consultant and for purposes of mergers and acquisitions by Mr. Goldenberg. So Mr. Goldenberg got together with Mr. Al Dayon, and they discussed the potential of merging the companies. Then Mr. Goldenberg and Mr. Dayon stepped away from the picture and let the attorneys come in to do their job, and that's why Gluskin came in and that's where Leeds came in.

The attorneys got together and they drew agreements, and the agreements resulted in a merger, and that merger resulted in a stock promotion. What happened was that a substantial number of shares of the new merged company were able to be sold to the public because of a certain exemption that Mr. Gluskin and Mr. Leeds and Mr. Ruggero, who were all attorneys, said existed in favor of this company, in that there were three minority stockholders, later it was found there were six, who as a result of the merger obtained stock in the

new entity - the new entity's name was changed to Mastercraft, although the old company was also Mastercraft, the new
company assumed the same name. This new company, you will
find from the evidence, was the merged company of First Standard
on the one hand and Mastercraft on the other. You will find
that Mr. Gluskin, the attorney, controlled the activities
of the stockholders of Mastercraft, and the only stock that
could be sold to the public was the stock of these minority
stockholders, and Mr. Gluskin wanted that money. That's what
the evidence will show.

Mr. Gluskin wanted that money for two reasons.

One, he promised Al Dayon that he would put \$200,000 of that money into Mastercraft because they needed the money, and, number 2, because he wanted to make investments. So you will see the evidence will show that as a result of the sale of this stock of employees, the employees received no money, they were nominees. The stock was in their name, the stock was sold through brokerage firms, the checks were made out to the employees, but John Gluskin would take these employees down to the bank, make them sign their names and deposit \$1,200,000 into his special account, an account over which he had complete and absolute dominion and control, complete. Not ody signed on the Gluskin account except John Gluskin. That's what the evidence will show.

The evidence will also show that all of these facts were well known to the government in 1971. I am telling you no evidence that you will hear today was not known to the government in 1971. John Gluskin decided he wanted to make a little money, and he thought that Bernie Goldenberg was a pretty bright guy. He put together a merger like this where he can walk off, meaning Gluskin, with one million two, and he knew, the evidence will show you, the type of mergers, the type of acquisitions Mr. Goldenberg was capable of. So he suggested to Mr. Goldenberg, form a corporation, Superior Plans, right here, and, "I will invest money in that corporation. I will invest money in that corporation. I will put the money in by way of loan, but I shall have the right to convert that money into stock."

So what did Bernard Goldenberg do? He secretively formed a company by filing it with Albary, Superior Plans.

Very secretively. Then he secretively opened up three bank accounts where he secretively, the evidence will show, put his name as president, put his name as a director and secretively put his name on these bank accounts as the person who will sign the checks. Then what did he do? He secretively took checks from Mr. Gluskin and he secretively deposited them in Superior Plans where no one could possibly find out, except if they ever saw a check from Mr. Gluskin's account or they

ever checked the bank account. In other words, he formed a bank account like anybody else would form a bank account. He opened one up. You will find that a very substantial amount of money was invested by Mr. Gluskin in Superior Plans. But Mr. Gluskin was not satisfied with Superior Plans. He took another \$50,000 of Mastercraft money and he stuck it into a company called Panasonic of Chicago which Mr. Goldenberg had nothing to do with. He promptly lost that money. Then he took another \$60,000 and invested it in another company, go public. Then he took another \$60,000 and he invested it in another company called Shows and Expositions. Then he took \$50,000 and stuck it in his pocket. He was doing that because he wanted to make some money, he was doing that for himself, not for the poor stockholders whose money he took.

Mr. Goldenberg went ahead and he started investing this money on behalf of Superior Plans. But, unfortunately, a lot of this money was invested in real estate and in a state and particular city which is different than any other city in the world, Las Verna. They don't deal in credit cards, the evidence will show. They deal in cash. He went shead and he secretively, Mr. Goldenberg secretively took checks from Superior Plans and made out those checks in his name. He didn't make it out, the evidence will show, in some nominee's name, he didn't make it out in some third party's name, he

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didn't try to hide whose name he was making it out in. He made the checks out in his name, and then he went ahead and invested it as he had a right to do as president of that company and received receipts for the amount of money he invested. The evidence will show that the only basis the government has for saying that Bernard Goldenberg had income was because they were not satisfied with the way he invested the money of Superior Plans. I am sure that if you follow the evidence and keep your eye on the ball, you will find that the government will fail to prove beyond a reasonable down that this chart that you see before you reflects income. It may reflect cash flow, but there is a big difference between what you earn and what you take in. There is a big difference between what you earn and what you borrow. There is a big difference

The government must prove beyond a reasonable doubt that Mr. Goldenberg not only earned the income the government says he earned, but that he knew that it was earnings, that he was not mistaken in his belief that it was not earnings, but that he intentionally intended to take this money and use it for his own purposes, knowing that it was income.

between what you earn and what is invested with you.

If the government fails to prove that beyond a reasonable doubt, and I believe the evidence will be such that they will fail to prove that, then you must find Mr. Goldenberg

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2 not guilty.

Thank you.

THE COURT: Call your first witness.

MR. LITTLEFIELD: The government calls Mr. Shapiro.

IRVING SHAPIRO, called as a witness on

behalf of the Government, having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LITTLEFIELD:

Mr. Shapiro, please keep your voice up loud and clear so that they can hear you all the way in the back of the jury box.

Where are you employed at present?

A I am employed by the controller's office of the City of New York.

Q As what?

As a field audit supervisor.

Q How long have you been employed with the city?

A 20 years.

Q During the tax season, do you have other jobs that you do?

A Yes. I -- the term is moonlight, and I prepare tax returns.

Q Where do you prepare tax returns?

		3/4
1	lh/lf	Shapiro-Direct 52
2	А	During the past fifteen, seventeen years, I have been
3	preparing	tax returns for an outfit called Whitehill Taxkeeping
4	Systems a	nd for an outfit called Federal Tax Service Company.
5	Q	How long do you work each year for Federal Tax
6	Service?	
7	А	Approximately two weeks. I take off from April
8	1st to Ap	ril 15th.
9	વ	How many returns do you do there?
10	A	A rough guess would be 150.
11	Q	Each two-week period?
12	Λ	Well, the past number of years it's been declining,
13	but in pr	or years it may have been as many as 200.
14	Q	That's Federal Tax Service turns out many, many
15	.ecurns,	s that right?
16	A	Yes, they do.
17	Q	Do you know a Bernard L. Goldenberg?
18	А	I know him due to the fact that I yes, I do.
19	I know him	due to the fact that I prepared a number of returns
20	for him fo	r a few years.
21	Q	What returns did you prepare? Not the years, but,
22	personal -	·
23	A	His personal return and approximately half a dozen
24	corporation	on returns.
25	۾	I show you Government's Exhibit 1 in evidence and ask
THE RESERVE OF THE PARTY OF THE		

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1	lh/lf Shapiro-Direct 53	
2	you, Mr. Shaprio, if you recognize that?	
3	A Yes. It is a 1968 individual tax return which I	
4	prepared for Mr. Goldenberg.	
5	You will have to keep your voice up.	
6	A It is a 1968 individual tax return which I prepared	
7	for Mr. Goldenberg.	
8	Q I show you what has been marked as Government's	
9	Exhibit for identification number 4, 5 and 6 and ask if you	
10	recognize those?	
11	A These are three corporation returns	
12	THE COURT: Do you recognize them?	
13	THE WITNESS: Yes, I do. It is my handwriting.	
14	Q Did you prepare those tax returns?	
15	A Yes, I did.	
16	Q Was that one of the corporations to which you referre	d
17	earlier that you prepared tax returns for Mr. Goldenberg?	
18	A Yes, it is.	
19	What is the name of that corporation?	
20	A Superior Plans, Inc.	
21	Q With respect to each of these returns, Mr. Shapiro,	
22	and I refer specifically to Government's Exhibit 1, the persona	1
23	tax return for 1968, could you tell the Court and jury what	
24	the procedure was which you used with Mr. Goldenberg to prepare	
25	these returns? Did he come to your office? Did he bring any-	

Would you ask him questions as to whether this for

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	11	
1	1h/1f	Shapiro-Direct 55
2	instance	
3	А	No Generally what I remember is that Mr. Goldenber
4	wanted t	to make sure that all the information that he had on
5	his shee	ets was somehow incorporated in the returns.
6	Q	The what would happen after he checked the returns?
7	This is	the second visit, is that right?
8	A	Yes. He may have signed them. This I don't know
9	for sure	. I think he did
10	Q	This is in your presence?
11	А	Yes.
12	Q	Then what?
13	٨	Then generally we talked about present him with
14	the bill	, and, what I remember, he would go over to see George
15	Samand	get the ill cut.
16	Q	Then what would happen?
17	Α	He would make out a check and take the returns and
18	depart.	
19	စ	He would take the returns with him, is that right?
20	А	Yes.
21	Q	You didn't send them in from your office?
22	A	No.
23	Q	Concerning the '68 personal tax retin, could you
24	explain	to the jury how it is that you arrived at the figure
25	which I	think appears on that of a loss of income of \$3,000

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1	1h/1f	Shapiro-Direct	57
2	This cons	ists of two items from page 2, a business	income of
3	\$3,252 and	d a long-term capital loss of \$1,000, a ca	pital
4	loss of \$	1,000.	
5	Q	Going back to page 1, what's the next fig	ure?
6	A	The next figure is itemized deductions of	\$2,496.
7	· Q	So where are you at this point on page 1?	
8	Α	Page 1, line 11A.	
9	Q	What does that show?	
10	,	Itemized deductions of \$2,696. This come	s from
11	the schedu	ule of itemized deductions.	
12	Q	What is line 11B	
13	A	11B is the exemptions, five exemptions time	mes \$600
14	1s \$3,000		•
15			
	Q	That's 11C. 11B.	
16	A	11P is a subtraction of \$2,252. into \$2,49	96, and
17	you end up	with a minus figure of \$244.	
18	Q	On line 5 where it says "Wages, Salaries,	Tips,"
19	is there a	any figure put in there?	
20	A	No.	
21	Q	So that the other income of 2,252 is the o	only income
22	that appea	ers on this first page?	
23	A	Right.	
24		From that you itemized deductions of \$2,49	062
25	Q		
	Α .	Diant	

1 lh/lf Shapiro-Direct 58 Q You get a negative figure of \$244? A Right. And then you take the number of exemptions which five, you multiply that by 600 - A No, add them up, and end up with a negative figure Q To get the number you multiply five times \$600 and get \$3,244 shown as a loss, is that right? A It is a negative figure. Q I want to refer you to page Schedule C of the tax return. That shows a gross receipts of \$57,000, does it not A Yes, it does. Q From the \$57,000 it shows A Expenses of \$53,748. Q That leaves the \$3,252 which on page 2 with the \$1,000 loss made up the 2,252? A Made up the 2,252. Q You have there the Superior Plans tax return, is that right? A Yes, I do. MR. LITTLEFIELD: The government offers those Superior Plans tax returns at this point. THE COURT: Mr. Berger? MR. BERGER: I am sorry, your Honor, I was speaking to my client.			0)4	
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			MR. BERGER: I am sorry, your Honor, I was sp	peaking
	25	to my clie	ent.	

1	1h/lf Shapiro-Direct 59
2	THE COURT: Mr. Littlefield has offered, what,
3	Exhibit 4?
4	MR. LITTLEFIELD: Yes, your Honor, Exhibit 4, the
5	Superior Plans tax returns for the fiscal year ending 3/31/69
6	and Superior Plans number 5 is Superior Plans tax return
7	for 1969. Number 6 is Superior Plans tax return for 1970.
8	Number 7 is Superior Plans tax return for 1971, number 7.
9	Have you got that there?
10	THE WITNESS: No.
11	MR. LITTLEFIELD: We will just go with the first
12	three. Tax return ending for the year '69 and tax return
13	
14	ending for the year '70.
	THE COURT: Exhibits 4, 5 and 6 is what you have in
15	front of you?
16	THE WITNESS: 4, 5 and 6.
17	THE COURT: You prepared those yourself?
18	THE WITNESS: Yes.
19	MR. BERGER: Have they been offered, your Honor?
20	THE COURT: They have been offered.
21	MR. BERGER: I object to 6, the year 1970.
22	THE COURT: For the time being I will sustain the
23	objection. We will take 4 and 5, 4 and 5 will be now marked
24	
25	in evidence. No objection?
	MR. BERGER: No objection.

		0,52
	1	lh/lf Shapiro-Direct 60
	2	(Government's Exhibits 4 and 5 were received in
xxx	3	evidence.)
	4	BY MR. LITTLEFIELD:
	5	Q You prepared these with Mr. Goldenberg the same as
	6	you did the personal tax return, is that right?
	7	A Yes, I did.
	8	Q At the time you prepared the personal tax return of
	9	1968, did you ask Mr. Goldenberg whether he had any other
	10	income other than that which has been listed on those sheets
	11	of paper?
	12	A Yes. I think it would be a perfunctory question
	13	THE COURT: Did you ask Mr. Goldenberg?
	14	THE WITNESS: I don't know. I can't remember.
	15	What is your normal practice?
	16	A It would be a normal practice for me to ask, you
	17	know, is there any other income, anything else.
	18	Did he tell you about any substantial quantity of
	19	income other than that which he had given you on those slips
	20	of paper?
	21	A No, he didn't.
	22 23	MR. LITTLEFIELD: I have no further questions of
	24	Mr. Shapiro at this moment, your Honor.
	_	THE COURT: All right. You may step down.

(Witness excused)

Leeds-Direct

1	lh/lf Wunk-Direct 61
2	G L O R I A W U N K, called as a witness on behalf
3	of the Government, having been first doly sworn, was
4	examined and testified as follows:
5	DIRECT EXAMINATION
6	BY MR. LITTLEFIELD:
7	Q Miss Wunk, will you look at Government's Exhibit 1
8	before you, the 1968 personal tax return. Can you tell whether
9	that was filed with the Internal Revenue Service?
10	A Yes, it was.
11	Q How can you tell that?
12	A Because it has our document locater number stamped
13	on the top.
14	MR. BERGER: Your Honor, we concede
5	THE COURT: Concede that it was filed on April, what
6	on or about April 15, 1969?
7	MR. BERGER: Yes.
8	THE COURT: So conceded.
9	MR. BERGER: Your Honor, one more thing. The last
20	witness failed to identify my client. I concede that it is
1	Mr. Goldenberg.
2	THE COURT: All right.
3	MR. LITTLEFIEID: I don't think he failed. I don't
4	think I asked him.
25	Q Miss Wunk, you are employed by the I.R.S., is that

		0/4	
1	1h/1f	Wunk-Direct	62
2	right?		
3	A	That's right.	
.4	Q	At the Brookhaven Service Center?	
5	Λ	Yes.	
6	Q	What is your position there?	
7	A	I am a senior clerk in the research brand	ch.
8	Q	I ask you to look at Government's Exhibit	t 4 for
9	identific	ation excuse me, in evidence, Governmen	nt's Exhibit
10	5 in evid	ence and Government's Exhibit 6 for ident:	Ification
11	and ask i	f they were all filed with the Internal Re	evenue
12	Service.		
13		MR. BERGER: Conceded, your Honor.	
14		THE COURT: The defendant will concede to	that the
15	exhibits	4, 5 in evidence and 6 for identification	were all
16	filed wit	h the Internal Revenue Service.	
17	Q	Have you been able to make a check with r	respect to
18	Superior	Plans Corporation to determine whether aft	er whether
19	returns w	ere filed for 1971, '72, '73?	
20		MR. BERGER: Objection, your Honor.	
21		THE COURT: Sustained.	
22	A	Yes.	
23	Q	Wait. You can't answer.	
24		MR. LITTLEFIELD: Your Honor, I have no f	urther
25	questions	of the witness at this time.	

1	lh/1f	Leeds-Direct 63	
2		THE COURT: She may be recalled eventually.	
3	She may r	not.	
4		MR. BERGER: No cross.	
5		THE COURT: You are excused.	
6		(litness excused)	
7		MR. LITTLEFIELD: The government calls Mr. Leeds	
8	your Hono	r.	
9	PHILI	P R. LEEDS, called as a witness on	
10	beha	lf of the Government, having been first duly sworn,	
11	was	examined and testified as follows:	
12	Q	Mr. Leeds, could you tell the jury where and when	
13	you were	born?	
14	A	In Russia, in 1915.	
15	Q	Are you a lawyer?	
16	Д	Yes.	
17	Q	Where did you go to law school?	
18	Α	Harvard Law School.	
19	Q	When did you graduate?	
20	Α	1946.	
21	•	Did you practice law after you got out of law	
22	school?		
23	А	Yes, I did.	
24	Q	Where?	
25	А	In New York City.	

1	1h/1f	Leeds-Direct	64
2	Q	From when to when and where?	
3	А	I beg your pardon?	
4	6	Free, when did you practice law up until	l what period
5	and how 1	ong did you and where d'd you practice	in New York
6	City?		
7	А	I was admitted in 1946 and practiced for	Irst at
8	111 Broads	way for about two years, and after that	at 60 East
9	42nd Stree	et until 1968. , .	
10	Q	What happened in 1968? Did you leave	New York
11	City?		
12	A	Yes, moved to Arizona; Tucson, Arizona	•
13	c	To that where you are now?	
14	Д	Yes.	
4	Q	What are you doing now?	
16	Α	I am attorney for a community development	ent company.
17	Q	In?	
18	Δ	In Tucson, Arizona.	
19	Q	Do you know Bernard Goldenberg?	
20	A	Yes.	
21	Q	How long have you known him?	
22	A	I believe I first met him in 1961.	
23	Q	Do you see him in the courtroom?	
24	А	Yes.	
25		MR. BERGER: The identification is con	ceded

_

THE COURT: Identification conceded.

- In what capacity did you know him in the 1960's?
- A Well, at first I represented a corporation which was negotiating a contract with him in connection with a pay TV antenna system, and I was the attorney drafting the agreement.
- Q Did you continue to work as an attorney for him throughout the 60's up until -- well, throughout the 60's?
- A No. I met him in that capacity in about '61 and then I believe I heard from him again in about 1964, '4 or '5.
 - Q Have you heard of a company called First Standard?
 - A Yes.
 - Q What is that?
- A Well, it was a corporate shell at the time I first became acquainted with it

THE COURT: What do you mean by a corporate shell?

THE WITNESS: It was a corporation which had been organized some years before and had issued stock to the public in connection with a chemical process it was going to engage in, that fell apart, it didn't continue, and the corporation remained with stock issued but with no business and had some money in the bank.

Q Did First Standard come to acquire a patent and some technical knowledge for a video tape machine?

	71a
1	lh/lf Leeds-Direct 66
2	A Yes, it did.
3	Q Could you describe what that video tape machine was:
4	A It was a machine which had been developed in England
5	and it would, by using an audio tape, record a picture and
6	sound which could then be played back.
7	Q Was Mr. Golde berg involved with First Standard?
8	A Yes, he was.
9	Q Was he one of the stockholders?
10	A Yes, he was.
11	Q Did there come a time when First Standard merged wit
12	Mastercraft Corporation?
13	A Yes.
14	Q What was Mastercraft Corporation?
15	A Mastercraft was a corporation engaged in having
16	manufactured for it various electronic devices in Japan and
17	marketing them in this country.
18	Q What was the purpose of the merger in terms of the
19	business potential of each of these companies?
20	A Well, First Standard had no more money, it had run
21	out of money, it had liabilities, and it this video tape
22	recorder or had some rights to it. Mastercraft appeared to
23	be a viable corporation with products and with a system of
24	distribution, and the principals wanted to merge the two
25	corporations so that Mastercraft could have the rights to the

	72a	
1h/1f	Leeds Direct	67
video tap	e recorder and get it produced.	
Q	Did you do some of the legal work in the	drafting
of the pa	pers in connection with this merger?	
A	Yes, I did.	
Q	You were representing whom at that time?	
А	First Standard.	
ધ્ય	Specifically whom at First Standard?	
	MR. BERGER: Objection.	
	THE COURT: Who were you dealing with at	First
Standard?		
	THE WITNESS: Well, Mr	
	THE COURT: You represented the corporat	on?
	THE WITNESS: Yes.	
	THE COURT: Who were you dealing with at	the corpora-
tion?		
	THE WITNESS: Mostly Mr. Goldenberg and	Mr. Dye.
Q	In connection with this merger, was there	e a discussion
about rais	sing money for the company that was going	to be the
combined o	company?	
^	Yes. One of the problems was to raise mo	one y.
Q	What was the new company going to be call	led, the
company th	hat was the combination of the original Ma	astercraft
and First	Standard?	
А	First Standard was going to buy the asset	ts of Master-
	video tap Q of the pa A Q A Standard? tion? Q about rais combined A Q company the	th/if Leeds-Direct video tape recorder and get it produced. Q Did you do some of the legal work in the of the papers in connection with this merger? A Yes, I did. Q You were representing whom at that time? A First Standard. Q Specifically whom at First Standard? MR. BERGER: Objection. THE COURT: Who were you dealing with at Standard? THE WITNESS: Well, Mr THE COURT: You represented the corporat THE WITNESS: Yes. THE COURT: Who were you dealing with at tion? THE WITNESS: Mostly Mr. Goldenberg and a tion? THE WITNESS: Mostly Mr. Goldenberg and a tion? A Yes. One of the company that was going combined company? A Yes. One of the problems was to raise me Q What was the new company going to be call company that was the combination of the original Me and First Standard?

	73a
1	lh/lf Leeds-Direct 68
2	craft and assume that name.
3	Q Just answer the question. The merged company was
4	going to be called what?
5	A Mastercraft
6	Q Who was present at the discussion of raising money
7	for this new company? Who was present? Just answer that one
8	question.
9	MR. BERGER: Your Honor, time and place.
10	MR. LITTLEFIELD: I have to ask one at a time. I
11	am going to ask who was present.
12	A At several meetings there were Goldenberg
13	Q Do you remember any particular meeting at which was
14	discussed the subject you just mentioned, raising money for
15	the new company?
16	A I don't remember any particular time of a meeting.
17	Q Approximately what year and what time were these
18	meetings taking place?
19	A In 1966. Particularly in the fall of 1966.
20	Q When did the merger take place?
21	A In September or October of 1966 no, '67. I beg
22	your pardon.
23	Q What happened in the fall of '67?
24	A There were several meetings at which the merger and
25	the form of the agreement were discussed.

		74a
1	1h/1f	Leeds-Direct 69
2	Q	When was the official merger? When was the closing
3	When were	the papers drafted? Approximately.
4	А	I believe December. I believe December 1st.
5	Q	or 19
6	A	Of 1967.
7	Q	These conversations which you described as being on
8	the subject	et of raising money for the new company, were they
9	at or abou	at that time of the merger discussions and before -
10	А	Yes. They were part of the overall discussions.
11	Q	Where did these conversations take place?
12	A	Generally at the offices of First Standard, which
13	was 521 F1	fth Avenue, I think, and one or two at the office
14	of Mastero	raft.
15	(Where was the Mastercraft office?
16	А	At 21st Street or 23rd Street and Broadway.
17	Q	Who was present when this subject was discussed at
18	this time	in either of those two places?
19	A	Generally Mr. Goldenberg, Mr. Dye, Gluskin, Dayon at
20	one or two	meetings, there was a man who was the president of
21	Mastercraf	t, I can't recall his name at the moment.
22	Q	Who is Mr. Gluskin?
23	A	Gluskin was the attorney for Mastercraft.
24	Q	Who was Mr. Dye? I think you already said.
25	А	He was the president of First Standard.

	/5a	
1	lh/lf Leeds-Direct 70	
2	Q Was there a proposal made in connection with the	
3	subject of raising money? Yes or no.	
4	A Yes	
5	Q Who was it made by?	
6	A Generally it was a three party thing: Goldenberg,	
7	Dayon, Gluskin.	
8	Q You were present there as well?	
9	A Yes.	
10	Was there a proposal made in terms of selling stock?	
11	A Yes.	
12	Q What was that and by whom was that made, if you re-	
13	call?	
14	A These proposals and discussions centered around	
15	Goldenberg, Dayon, for the most part, and Gluskin was in on	
16	some of the discussion, and the general nature of the discussion	n -
17	Q If you can be precise as to who said what, do that.	
18	If you can't be precise as to who said what, say what was	
19	agreed upon among these people, what was said and agreed	
20	upon, without going into great detail about technicalities,	
21	just generally explain what the result of these conversations	
22	was.	
23		
24	, and a marger bookers 12100 standard and	
25	Mastercraft should be done; that First Standard should have	
	no liabilities when the merger came about or negligible liabili-	•

	76a •
1	lh/lf Leeds-Direct 71
2	ties; three, that some method would have to be found to have
3	the video tape recorder manufactured in Japan and brought into
4	this country by letters of credit. That was about the
5	nature of the discussion.
6	Q You said before there were discussions about raising
7	money. Was it discussed how money would be raised?
8	A Yes. There was discussion that under Rule 133,
9	stock distributed to the stockholders of Mastercraft could be
10	sold by them in the market, and that the proceeds of such sales
11	ought to be applied to the financing of the video tape recorder
12	and marketing it.
13	G Was it suggested that you would handle the sale of
14	some of this stock by the employees?
15	A Yes.
16	Q Who suggested that?
17	A Mr. Goldenberg.
18	What did you say?
19	A I said I thought John Gluskin should do it because
20	he was the attorney for Mastercraft and knew the employees
21	and stockholders.
22	What did Goldenberg say to that, if anything?
23	A I don't think Goldenberg said anything.
24	Q What did anybody else say?
25	A Gluskin said he thought I should do it because I was

Q

Yes.

	/0a
1	lh/lf Leeds Direct 73
2	A I think he had the use of an office there, yes.
3	Q Approximately what month and what year was it
4	that you were involved in this selling of stock for employees?
5	A In about the second week of February, 1968.
6	Q How do you know that?
7	A Well, I place it because immediately after I made
8	the first two sales, we, my wife and I and children, went to
9	Tucson on a vacation for about eight days.
10	Q On an occasion before you left for Tucson, did you
11	have a conversation with Mr. Goldenberg relating to the sellin
12	of the stock? Just yes or no.
13	A Yes.
14	Q Then there came a time when you went to Tucson,
15	is that right?
16	A Yes.
17	Q What did you do while you were in Tucson? What was
18	the reason for that trip?
19	A Two things. Mostly to see whether we were going to
20	move to Tucson because of my wife's arthritis and whether
21	we could live there and whether that's the place we wanted
22	to move to.
23	What happened while you were out there?
24	A We decided that that's where we are going to go.
25	Q When you came back, what happened?

lh/lf Leeds-Direct

A We got back on a Monday right after Washington's
Birthday and among other things on my desk there were confirmstions of these couple of sales I had made and some checks made
out to the employees. I called Mr. Goldenberg and told him
that I had decided not to continue with the sales of stock
for the employees and that somebody else would have to do it.

Q What did he say, if anything?

A Well, he was sorry that I was going to be leavin; town, but if it had to be, fine. He said he would talk to Gluskin.

Q At or about this time were you asked by Mr. Goldenberg to set up a corporation for him?

A Yes.

Q What did he tell you in respect to that?

A He wanted a corporation set up, just an ordinary everyday business corporation, and that he intended to use it for certain purposes.

Q Did he tell you what purposes?

At the time he said he intended to or hoped to get two or three advertising agencies to come into this corporation and form a conglomerate.

Q Did you, in fact, file some papers in connection with the incorporation?

A Yes, I did.

XXX

1	lh/1f	Leeds-Direct 75
2	۹	What was the name of the corporation?
3	A	The name finally approved was Superior Plans, Inc.
4	Q	I show you what's been marked as Government's Exhibit
5	9 for ide	entification.
6		THE COURT: 9 is in evidence.
7	Q	9 in evidence, and ask you if you recognize that,
8	and I wil	l mark as 9D this exhibit as well.
9		(Government's Exhibit 9D was marked for identification.)
10	Q	I show you 9 and 9D and ask you if you recognize
11	them.	
12	А	Yes.
13	Q	What 1s 9?
14	А	9 is a photocopy of a certificate of incorporation
15	of Superi	or Plans, Inc.
16	Q	What is the date of that?
17	Α	The date of execution is March 7, 1968.
18	Q	Is that a copy of your signature on this?
19	А	Yes.
20	Q	Does this document state how many shares there are
21	to be issu	ued in this corporation?
22	A	Well, it is authorized to issue 200 shares, no par.
23	Q	Does it state what is to be the post office
24	address de	esignated as the agent of the corporation for the
25	purposes	of the Secretary of State mailing any documents to the

24

25

XXX

Yes.

What is that? Q

THE COURT: 9A is in evidence.

	028
1	lh/lf Leeds-Direct 77
2	A This is the receipt from the Department of State
3	on the organization of Superior Plans, Inc.
4	MR. LITTLEFIELD: Your Honor, so I am clear and so
5	that the record is clear, 9 is the certificate of incorporation
6	and 9D is the carbon of the certificate of incorporation,
7	and both are in evidence.
8	THE COURT: That's correct.
9	MR. LITTLEFIELD: 9A is the filing receipt and 9A
10	is in evidence.
11	THE COURT: Correct.
12	MR. LITTLEFIELD: 9B is the corporate record book
13	and 9B is in evidence.
14	THE COULT: It is not in evidence.
15	MR. LITTLEFIELD: I offer it in evidence.
16	THE COURT: Show it to Mr. Berger.
17	MR. BERGER: Voir dire.
18	THE COURT: Yes.
19	VOIR DIRE EXAMINATION
20	BY MR. BERGER:
21	Q Mr. Leeds, prior to today when is the last time you
22	have seen this document, this corporate record book?
23	A When I turned it over to Mr. Munisteri.
24	THE COURT: What's the date of that?
25	THE WITNESS: I am not sure. I believe in about 1970.

	950
1	lh/lf Leeds-Direct 78
2	Q Is it your job to keep the record book up to date as
3	attorney for the corporation?
4	MR. LITTLEFIELD: Objection, your Honor. That's
5	cross examination, not voir dire.
6	THE COURT: Yes.
7	Q Is there any way you can identify this as the particular
8	lar record book you turned over?
9	A Well, I believe it is. The only difference is
10	there is one certificate missing, and I don't believe it was
11	missing when I turned it over. Other than that, it appears
12	to be exactly what I had and turned over.
13	Q Is there any writing of yours on there to indicate
14	that that's the record book you turned over?
15	A No.
16	Q Is there anybody else's writing on there to indicate
17	that that's the record book you turned over?
18	MR. LITTLEFIELD: I object.
19	THE COURT: Yes. He indicated that this is the book
20	that he turned over, except one certificate is missing.
21	Isn't that correct?
22	THE WITNESS: That's correct.
23	THE COURT: Except for that, that's exactly what you
24	turned over in 1970?
25	THE WITNESS: Yes, your Honor.
.	

	84a
1	lh/lf Leeds-Direct 79
2	THE COURT: You recognize it to be so?
3	THE WITNESS: Yes, I do.
4	THE COURT: Any objection?
5	MR. BERGER: On relevancy, your Honor.
6	THE COURT: Overruled, if that's your sole objection.
7	MR. BERGER: Also that it is hearsay as to my
8	client, having been in the possession of Mr. Leeds and being
9	handled by Mr. Leeds all along, and that nothing has been done
10	to it in the ordinary course of Mr. Leeds' business.
11	THE COURT: You were the attorney for the corporation?
12	THE WITNESS: Yes, your Honor.
13	THE COURT: Part of your duties as attorney for the
14	corporation was to keep this corpora a record book up to date?
15	THE WITNESS: It was.
16	THE COURT: It was the regular course of the business
17	of Superior Plans, Inc., to have a corporate book and have it
18	kept up to date?
19	THE WITNESS: Yes, your Honor.
20	THE COURT: I will receive it.
21	(Government's Exhibit 9B was received in evidence.)
22	THE COURT: The only other thing was, at the time that
23	these records were made, that the records made in here, they
24	were made at or about the time the events occurred, is that
25	correct?

XXX

	85a
1.	lh/lf Leeds-Direct 80
2	THE WITNESS: There are no records in there.
3	THE COURT: Whatever records are in there
4	THE WITNESS: I ordered the minute book at the time
5	of the organization of the corporation, and I had it in my
6	possession in Tucson, Arizona.
7	THE COURT: We are going into another area.
8	MR. LITTLEFIELD: This is a fine time for a break.
9	THE COURT: Don't discuss the case, don't make up
10	your mind about it.
11	We will take a ten minute recess.
12	(Recess)
13	BY MR. LITTLEFIELD:
14	Q With respect to this corporation, Superior Plans,
15	did Mr. Goldenberg tell you who were going to be the officers?
16	A Yes.
17	ଦ Who?
18	A He.
19	Q What would he be?
20	A He would be president and director.
21	Q Would you be the secretary?
22	A Yes.
23	Q With respect to the issuing of stock, was stock
24	ever was any stock ever actually issued, to the best of
25	your knowledge?

C.

	86a	
1h/1f	Leeds-Direct	81
4	I never issued any certificates o	f stock.
Q	Was it discussed initially what M	r. Goldenberg's
position	would be vis-a-vis the company in	terms of the stock?
A	Well, it was his corporation. He	would own all the
stock.		
Q	Did you have a conversation at or	about this time
that you	were discussing the corporation, se	etting up the
corporati	on with Mr. Goldenberg, on the sub,	ject of debentures?
А	Yes.	
Q	Was that conversation with Mr. Go	ldenberg?
Α	Yes.	
Q	Where was it?	
A	At my office.	
Q	What was that conversation about?	What did he say
to you?		
А	Well, Mr. Goldenberg asked me abou	at various forms of
debt that	corporation could undertake, and	ranged
the gambi	t with him from an ordinary promiss	sory note to deben-
tures, whi	ich are fancy notes, promissory not	ces. After some
conversati	ion he asked me for a draft of a de	benture.
Q	Did he tell you who he was going t	to issue them to
or who he	intended to issue them to, if anyo	ne?
A	He mentioned two classes of people	e: one, these
advertisi	ng companies, and the other, Mr. Gl	uskin.
	position A stock. Q that you corporation A Q A Q to you? A debt that the gambit tures, which conversation Q or who he A	I never issued any certificates of Q Was it discussed initially what M position would be vis-a-vis the company in A Well, it was his corporation. He stock. Q Did you have a conversation at or that you were discussing the corporation, so corporation with Mr. Goldenberg, on the sub. A Yes. Q Was that conversation with Mr. God A Yes. Q Where was it? A At my office. Q What was that conversation about? to you? A Well, Mr. Goldenberg asked me about debt that corporation could undertake, and it the gambit with him from an ordinary promise tures, which are fancy notes, promissory not conversation he asked me for a draft of a deal of the point of the point of the conversation hasked me for a draft of a deal of the conversation he asked me for

.		87a	
1	1h/1f	Leeds-Direct 82	
2	Q	Did you prepare a draft debenture?	
3	A	Yes.	
4	Q	Were there a number of drafts then prepared back	
5	and forth	?	
6	Δ	My recollection is three drafts.	
7	(When you prepared the drafts, whom did you give it	
8	to?		
9	А	Mr. Goldenberg.	
10	Q	Did you go over it with him?	
11	А	Yes.	
12	Q	Where did this take place?	
13	А	In my office.	
14	Q	This was prior to the time of the filing of the	
15	incorpora	tion of the company Superior Plans?	
16	А	In and around the same period of time. The	
17	organizat	ion of Superior took about a week, and it was in that	
18	time perio	od.	
19	Q	I show you Government's Exhibit 13 in evidence,	
20	which are	25 in number, and ask if you recognize them?	
21	Α	Yes.	
22	С	What are they?	
23	А	These are debentures, original, I think, and Xeroxes	
24	no, there	is no original, they are all Xeroxes, forms of	
25	debenture	issued by Superior Plans.	

	35/30
1	lh/lf Leeds-Direct 83
2	What do you mean there is no original, they are
3	all Xeroxes?
4	A The numbers I look at it starts with number 2,
5	and that's a Xerox, and all the rest of these appear to be
6	Xeroxed.
7	THE COURT: For the same number 2?
8	THE WITNESS: Well, your Honor, there is a form and
9	then blanks are filled in.
10	Q That's what I am driving at here. Your signature
11	is not a Xerox signature on these documents?
12	A Oh, no, the signatures are originals on all of them.
13	Q Explain what you mean, then, when you say they are
14	Xeroxed. How did you draft these debentures? In what form,
15	so that they could be issued?
16	THE COURT: Why don't you describe them to us?
17	There are 25 of them?
18	THE WITNESS: There are 25 here, your Honor.
19	THE COURT: Are they all in the same face amount?
20	THE WITNESS: Each one is \$10,000.
21	THE COURT: Each one represents a separate debt?
22	THE WITNESS: Yes, sir. They are numbered serially
23	from 2 on.
24	THE COURT: From 2 through 25?
25	THE WITNESS: And they have -

	89a
1	lh/lf Leeds-Direct 84
2	THE COURT: 2 through 26, I guess.
3	MR. LITTLEFIELD: That's correct.
4	THE WITNESS: They have varying dates of issue and
5	of maturity.
6	THE COURT: Are they seriatim?
7	THE WITNESS: March 8, 1970.
8	THE COURT: Is the first one?
9	THE WITNESS: Yes, sir.
10	THE COURT: What's the next one?
11	THE WITNESS: March 11th.
12	THE COURT: When do they mature?
13	THE WITNESS: Two years.
14	THE COURT: All two years?
15	THE WITNESS: Yes.
16	THE COURT: The first one begins on March 8th,
17	second one March 11th. What is the 26th one?
18	THE WITNESS: May 20, 1970.
19	THE COURT: They run from a period between March
20	8, 1968, to that date in 1970, is that correct?
21	THE WITNESS: I make one correction, your Honor.
22	That's the date they would be due, not the date of issue.
23	The date of issue runs from March 8, 1968, through May 20,
24	1968. Those were the issue dates, and then two years later
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the due dates.

BY MR. LITTLEFIELD:

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Q You said that they were Xeroxed. Could you explain to the jury how it was that it was arranged that they would be filled in? Did you leave certain blanks on them and did you make one original, leave certain blanks on that, and then were Xeroxes made from that original while the blanks were still on it and then were the blanks filled in subsequently

A That's correct. This was a form in which dates and names could be filled in. From the original, Xeroxes in blank were made, and then the dates, the due dates, the issue dates and the holder were filled in afterwards, although I had signed them at the time of making the Xerox, in blank.

Q You signed them at the very beginning in blank, is that right?

A Yes.

or the dates that it indicates?

The first paragraph of this debenture refers to the sum of \$10,000 debenture and payable --interest payable at the rate of six percent per annum, semiannually, on the first days of January and July of each year. Were those conditions gone over by you with Mr. Goldenberg prior to their appearing in their debenture?

A Yes.

Q The debenture goes on, the next paragraph says that

1 lh/lf Leeds-Direct 86 it is one of a series of 50 in the aggregate sum of \$500,000 2 3 authorized by the corporation. First question: did you sign 4 50 or did you sign fewer than 50? 5 No. My recollection is that I signed about 25. 6 Next question: it says authorized by the corporation. 7 Was there a corporate resolution of any sort authorizing 8 issuance of debentures and borrowing of money? 9 No, that had not been done. 10 Was 1t done? 11 A No. 12 I refer you to the bottom paragraph on the debenture 13 form which says the registered holder shall have the right 14 upon written notice to the corporation during the term of this 15 debenture and prior to redemption or maturity to convert this 16 debenture into one share of the capital stock of the corporation. 17 Could you describe to the Court and jury how that got into the 18 debenture? 19 Well, it was Mr. Goldenberg's desire to have that 20 provision part of the debenture, and that was inserted. 21 What did that mean, if you could explain that to us, 22 what does that mean? 23 Well, the debenture is debt of the corporation which 24 would have to be repaid. It represents a loan to the corporation. 25

This paragraph provided that the holder of this debenture could

93a 1 1h/1f 88 Leeds-Direct 2 What was that conversation? 3 Mr. Goldenberg wanted a letter from Gluskin --4 Please keep your voice up. 5 Mr. Goldenberg wanted a letter from Gluskin exercising 6 this conversion privilege. 7 Did he want this at the time that these debentures --8 that this first debenture was issued? 9 At about the same time. 10 Q Did he get such a letter from Mr. Gluskin? 11 A Yes. 12 Q Did you see it? 13 Yes, I saw either the original or a copy. 14 0 Who showed it to you? 15 I think Mr. Goldenberg. 16 Was it signed, if you recall? 17 Signed by -- well, if I saw the original, it was 18 signed by Gluskin. If it was a copy, it had his name on it 19 or it was on his letterhead, but probably not signed. 20 I show you Government's Exhibit 14 for identification --21 excuse me, 14 is in evidence. I ask you if you recognize that? 22

A Yes.

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Q What is that?

A This is a copy of the letter from Gluskin : Superior Plans electing to convert the debentures into common stock.

94a Leeds-Direct 1 lh/lf 89 Is that the one that you saw or the one that Mr. 2 3 Goldenberg showed you or did he show you another one, an original? A I don't recall at this time. 6 Q Do you recall whether one you saw had a signature 7 on it or not? 8 A My best recollection is that there was a signature 9 or a signed letter. 10 Q Was there a date on that letter that Mr. Goldenberg 11 showed you? 12 A No. 13 Q It was an undated letter? 14 A Yes. 15 What then does that letter mean in terms of these 16 debentures? 17 A Well, Mr. Goldenberg -- the date could be inserted 18 on that letter at any particular time. 19 What would the effect of that mean? 20 A It would effectively elect to convert from the 21 debentures into stock of Superior Plans. 22 What would that mean in terms of Mr. Gluskin getting 23 \$10,000 per debenture? 24 A He would not longer be a c editor nor would anybody

holding the debentures. They would be stockholders.

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95a

1 1h/1f Leeds -Direct 90 2 C He would be a stockholder? 3 Yes. 4 0 In? 5 Superior Plans. 6 Did you have a conversation with Mr. Gluskin and 7 Mr. Goldenberg or one or the other about your preparing a 8 letter indicating what the corporation -- what activities 9 the corporation would undertake? 10 A Yes. 11 What was that conversation? 12 Gluskin wanted a letter. He said Goldenberg had 13 talked with him about buying debentures, and Gluskin wanted some 14 letter in his file as to what Superior Plans was, what it 15 proposed to do. 16 Did you and Mr. Goldenberg prepare such a letter? 17 Yes. 18 What were the circumstances of that, if you recall? 19 I told Mr. Goldenberg about Gluskin's call, and he 20 said, "Oh, we can give him that kind of a letter," and we 21 discussed it and drafted maybe two drafts of a letter, which 22 was then typed up and sent to Gluskin. 23 At this time that the corporation, the certificate of 24 incorporation was filed and the debentures were issued and 25

these letters were written, did Mr. Goldenberg open a bank

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March 18, 1968.

1	lh/lf Leeds-Direct 92
2	Q I show you the back of Government's Exhibit 11
3	for identification and ask if you recognize that?
4	A Yes.
5	G What is that?
6	A This is a signiture card which accompanies the bank
7	resolution and has to be filed with the bank to show who is
8	authorized to sign and a sample of the signature.
9	MR. LITTLEFIELD: The government offers Government's
10	Exhibit 11, your Honor.
11	THE COURT: Do you recognize the signatures on
12	there?
13	THE WITNESS: Yes.
14	THE COURT: Whose signatures are on the back?
15	THE WITNESS: Mr. Goldenberg's and mine.
16	THE COURT: Any objection?
17	MR. BERGER: No, your Honor.
18	THE COURT: Received in evidence.
19	(Government's Exhibit 11 was received in evidence.)
20	Q After you signed the corporate resolution for the
21	opening of the account for Superior Plans at Central State
22	Bank, did you ever have anything further to do with that
23	aecount?
24	A No.
25	Q Were you ever aware of what happened to that account

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1h/1f Leeds -Direct 93 2 or after that date when you filed whatever -- you signed 3 whatever documents were necessary to open the account? A Not at all. Did there come a time when you finally moved to Tucson? 6 Yes. 7 When was that? A April 17, 1968. 9 Preparatory to moving to Turson, what was occurring 10 in New York? 11 Well, two large areas. We were selling the house 12 and in my office I was turning over matters to other lawyers 13 and closing files and getting ready to move. 14 Prior to leaving for Tucson, and I direct your atten-15 tion back to February, when you were first selling some of 16 this stock for the employees and then you said you decided you 17 didn't want to do that any more and you told this to Mr. 18 Goldenberg and he suggested Mr. Gluskin would take over from 19 you, was there a conversation at which you were told where this 20 money -- where the money from the stock would be deposited? 21 In other words, what was the plan with respect to collecting 22 the proceeds from the stock sale? 23 At the time I agreed to make the sales, I drafted 24 an agreement to be signed by the stockholder employees for 25 whom I was going to sell the stock, authorizing me to sell the

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1	1h/lf Leeds-Direct 94
2	stock and describing how the proceeds would be turned over
3	either into an account for them or the purchase of some
4	investments for them. After I got back and turned over the
5	whole thing to Gluskin, I turned over these agreements to him,
6	too. He was to open a special account for these proceeds.
7	Q After you went to Tucson, did you have any occasion
8	to talk to Mr. Goldenberg in the next month or so after you
9	left for Tucson?
10	A After I moved there permanently?
11	Q Yes. In April.
12	A Yes. I think in about the end of May or thereabouts
13	I called him and said that in going through the files I still
14	had the minute book and I had some other papers of his.
15	Q What minute book?
16	A The Superior Plans minute book.
17	Q Were you referring to Government's Exhibit 9B?
18	А 9В.
19	Q You said you still had that in Arizona?
20	A Yes.
21	You had taken that with you?
22	A Yes.
23	Q What was the conversation with Mr. Goldenberg at
24	that time?
25	A I told him I had the minute book, I had a couple of

1h/1f Leeds-Direct 95 2 other papers of his, and I asked him what he wanted me to do 3 with them, and he said, "Just hold on to them for now, I may be out West in awhile." I asked him how First Standard 5 was doing, and he said fine, everything was fine. That was about 6 the end of the conversation. Q What do you mean by First Standard? 8 Mastercraft, the surviving company. 9 Did he ever ask you for the book again? 10 No. 11 Looking through the minute book, is there any record 12 in the minute book of any meetings of stockholders ever being 13 held for Superior Plans? 14 No. 15 Is there any indication that any shares were ever 16 issued in Superior Plans? 17 A No. 18 Is there any indication that anything, any corporate 19 is there any indication in that book, Government's Exhibit 9B, 20 that the corporation had any activity at all? 21 No. 22 I show you, Mr. Leeds, what has been marked as 23 Government's Exhibit 12 for identification. Excuse me. 12 24 is in evidence. Government's Exhibit 12. I ask you, referring 25

to the last page of this document, whether you recall that as

	101a
1	lh/lf Leeds-Direct 96
2	being your signature?
3	A It looks like my signature, but I believe I did
4	not sign this.
5	Q What makes you believe that?
6	A Well, it doesn't have my middle initial, and I always
7	use the middle initial when I sign something.
8	This document reads on the top
9	MR. LITTLEFIELD: Your Honor, if I may, since it is
0	in evidence, "Corrorate Resolution of Superior Plans, Inc.,
1	Chelsea National Bank, I as secretary of Superior Plans, Inc.,"
2	and I am not going to read the whole thing, your Honor, just
3	the highlights. Mr. Berger has a copy
4	THE COURT: Read what you want. Go ahead.
5	MR. LITTLEFIELD: "I as secretary of Superior
6	Plans, Inc., a corporation duly organized and existing under
7	the laws of New York, hereby certify to the Chelsea National
8	Bank that a meeting of the board of directors had been called
9	on the 12th day of June, 1968, that at said meeting a quorum
0	was present and voting throughout, and the following resolutions
1	on motions duly made and seconded were unanimously adopted
2	and are now in full force and effect," to the effect that,
3	The Chelsea National Bank be and hereby is designated as a

depository for this corporation," and I think it would be fair

to say this is a document similar to the Central State Bank

102a 1 1h/1f Leeds-Direct 97 2 document relating to the opening of a bank account. 3 THE WITNESS: Yes. MR. LITTLEFIELD: The date on this document is the 5 5th of June, 1968. It appears to be the 5th of June, 1968. 6 Though on the front it says 12th of June, it appears to say 7 5th of June on the bottom. 8 BY MR. LITTLEFIELD: 9 In June, did you come back to New York? 10 No. 11 Did Mr. Goldenberg send you out the Chelsea National 12 Bank corporate resolution to be filled in or signed in Tucson? 13 A No. 14 Ware there any further contacts that you had with 15 Mr. Goldenberg after you left for Tucson relating to Superior 16 Plans, other than the one you described already about the 17 minute book? 18 A No. 19 Q Did you officially resign, ever, as secretary? 20 A No, I never did. 21 Did he ever ask you to do so? 6 22 A No. 23 MR. LITTLEFIELD: I have no further questions. 24 THE COURT: You will be sometime with this witness? 25 MR. BERGER: Yes, I will.

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THE COURT: It is a quarter of five. I think we are going to let you go home for the evening. Let me remind you, you are going back home tonight, it is always pleasant when you get home to have some conversation about what happened during the day and what you have been doing. I know that you remember my admonition not to talk about the case. Don't let anybody else discuss it with you. As I have indicated to you, one of your most important functions would be to assess the credibility of witnesses. Somebody at home is not seeing what you are seeing or hearing what you are hearing firsthand here. So don't talk about it with anybody, don't let anybody talk with you about it. I have one or two matters on tomorrow morning, and one of them is going to take me a little bit beyond 9:30 if they are all on time, but if you will be here at 9:30, we will start shortly thereafter but not promptly at 9:30. Have a pleasant evening. We will see you in the morning.

(Jury not present)

MR. LITTLEFIELD: Could the witness be excused, your Honor?

THE COURT: Yes.

(Witness excused)

MR. LITTLEFIELD: Your Hanor, two matters. First, with respect to Mr. Leeds, this is the matter I brought up

become fairly -- the theory of why the government wishes to

introduce that evidence I think is self-explanatory, becoming

more as the evidence comes out, but I just would urge on the

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Court that it is admissible to show that this corporation had

no activities, had no -- essentially no assets, no profit and loss.

THE COURT: Aren't you going to try and show, as I understand what you have indicated, that you are going to show

MR. LITTLEFIELD: That's right.

Superior Plans, into the defendant.

that \$540,000 was funneled through Mastercraft, through

THE COURT: That was done in the year 1968.

MR. LITTLEFIELD: That's right

THE COURT: The tax year 1968.

MR. LITTLEFIELD: That's right.

THE COURT: Why do we need anything beyond that?

MR. LITTLEFIELD: The government's point is that
Superior Plans was merely set up to receive the money, to
camouflage the fact that the money was coming through
Superior Plans to Goldenberg. If presumably Mr. Berger is
going to argue that this was -- Gluskin was investing in
Superior Plans, Superior Plans was a corporation that had some
hopes of doing something. If it never did anything, that
circumstantially supports the government's idea, theory of
the case --

THE COURT: He isn't going to be able to argue any-

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I am not going to permit him to argue it to the jury if it is not based upon any testimony or evidence in the record. If he presents some evidence or testimony with respect to that on his case in rebuttal, we may accept the subsequent years.

Unless you can show me that I should allow this in --

MR. BERGER: I just find it very hard to understand. I could understand the government's contention if there were no business if the witnesses did not testify that Superior Plans had contemplated certain businesses. But I for one have a client who just did \$640,000,000 in business and filed a petition in bankruptcy, they are out. W.T. Grant is out. I don't think the fact that the company ooses money and goes out of business is probative or relevant to this case. I think what Mr. Goldenberg intended to do is the key to this case, not what ultimately happened. Everyone that goes into business goes in with the hopes and expectations of making money. We know that out of every 100 corporations formed each year, approximately 70 to 80 percent are out of business by next year. That is the unfortunate fact. The road to hell is paved, of course, with good intentions. If it weren't for the promoter, this country would be nowhere, and all the rest of the cliches, but that's a fact. The fact is that if Mr. Goldenberg intended to do certain things and they went bad, that does not mean that

107a 1 1h/1f Mr. Goldenberg had income nor is it indicative of the fact 2 that he had a criminal intent to begin with. I think that it 3 is really not that probative on the issue. 5 THE COURT: I will think about it some more, but 6 those are my first indications, unless the defendant in some 7 way or other opens the door to that. Then, of course, they 8 come in. 9 MR. LITTLEFIELD: We are not trying to show there 10 was a lot. We are just trying to show there was no activity, 11 nothing, ever happening to that corporation. Mr. Berger is 12 going to argue that it was Mr. Goldenberg's intent to do something 13 with the corporation, it certainly is relevant to show that he 14 didn't do anything with it. 15 THE COURT: I will think about it. Be here at 9:30. 16 (Court adjourned) 17 18 19 20 21 22 23 24 25

108a agliardi 1h/1f Leeds-Direct 103 UNITED STATES OF AMERICA 3 VS. 75 Crim. 385 4 BERNARD L. GOLDENBERG 5 April 7, 1976 6 (In open court - jury present) 7 PHILLIP LEEDS, resumed. 8 DIRECT EXAMINATION CONTINUED 9 BY MR. LITTLEFIELD: 10 Q Mr. Leeds, yesterday when you testified, you had been 11 shown Exhibit 12, a photocopy of this corporate resolution at 12 the Chelsea National Bank. I now have the original, which I 13 would mark as 12A. 14 (Government's Exhibit 12A was marked for identifica-15 XXX tion.) 16 Q I show you 12A and ask you if by examining the 17 original you are able to conclude whether in fact that is your 18 signature or whether that is someone else's signature of your 19 name? 20 It looks like my signature, but it does not have my 21 middle initial, which I would always use. 22 So is it your testimony that you did not sign that? 23 Yes. 24 MR. BERGER: Objection, your Honor.

THE COURT: No, I will permit it.

	109a	
1	lh/lf Leeds-Direct 104	
2	A (Continuing) Yes.	
3	Q Is it also your testimony that you do not recal	l eve
4	being asked to sign a corporate resolution for any bank of	ther
5	than the Central State Bank for Superior Plans' opening a	
6	account?	
7	A Yes.	
8	Q This is the Chelsea Bank resolution, is that ri	ght?
9	A Yes.	
10	What is the date that it is purported	
11	A June 5, 1968.	
12	Q At that time you had moved to Tucson, is that r	ight?
13	A Yes.	
14	MR. LITTLEFIELD: The government offers 12A, you	ır
15	Honor, which is the original of 12 already in evidence.	
16	THE COURT: Any objection?	
17	MR. BERGER: No objection.	
18	THE COURT: It is received in evidence.	
19	(Government's Exhibit 12A was received in evider	ice.)
20	Q Yesterday, Mr. Leeds, you testified about a lett	er
21	which you had sent to Mr. Gluskin at his request which was	
22	prepared by you and Mr. Goldenberg in connection with Supe	
23	Plans, and I show you what has been marked as Government's	
24	Exhibit 13A and ask if you recognize that?	
25	MR. BERGER: Objection, your Honor, as to the	

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1104
lh/lf Leeds-Direct 105
characterization of Mr. Littlefield.
THE COURT: Do you recognize that document?
THE WITNESS: Yes, your Honor.
Q What is that?
A It is a letter I sent to Mr. Gluskin, dated March
1, 1968.
Will you tell us the circumstances of how you prepared
that letter?
A Mr. Gluskin wanted a letter saying something about
Superior Plans, that it was organized, that it was a viable
corporation and what it proposed to do. I told Mr. Goldenberg
about the call, and he said, "Well, we will make up a letter
for Gluskin," and he and I then composed this letter, and I
sent it to Gluskin.
Q When you say he and you composed it, which part did
he compose and which part did you compose, if you can tell
that? You can summarize which part you composed and which
part he composed.
A I'd say the first, third and fifth paragraphs and the
last one are mine, and the others would be Mr. Goldenberg's
language.
Q What do those paragraphs contain?
A Which ones?
Q The ones that you did and the ones in Mr. Goldenberg's

1	1h,'1f	Leeds-Direct	106
2	language	?	
3	А	The first one says Mr. Goldenberg is	
4	a corpor	ation under the name Superior Plans, a	uthorized capital
5	of 200,	no par. The third paragraph says	
6		THE COURT: Excuse me. Is this in e	vidence?
7		MR. LITTLEFIELD: The government off	ers it, your Honor.
8		THE COURT: You better do that befor	e he reads from
9	1t.		
10		MR. BERGER: No objection, your Hono	r.
11		THE COURT: All right, it is receive	d.
12		(Government's Exhibit 13A was received	red in evidence.)
13	Q	The second paragraph was prepared by	whom?
14	А	Well, that was Mr. Goldenberg's lang	uage.
15	Q	What is that?	
16	А	It says the purpose of his organizin	g the corporation
17	is to acc	quire existing advertising agencies si	milar to Inter-
18	public,	paren, numerous advertising agencies	in one conglomerate.
19	4	The third paragraph, who prepared th	at? Whose
20	language	is that?	
21	А	That would be mine. Mr. Goldenberg	is going to
22	invest 20	00,000 shares of Mastercraft Electroni	investment
23	shares in	exchange for the issuance to him of	50 shares of
24	Superior.		
25	Q	Next?	

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He was paying me \$1,000 a month retainer.

As far as fee

113a

1	lh/lf	Leeds-Direct 108
2	Q	Did you have any other clients who paid you anywhere
3	near tha	et much a month?
4	Α	Not quite
5		MR. BERGER: Objection, your Honor.
6		THE COURT: Sustained.
7	6.	What was the next highest fee paid you by any
8		MR. BERGER: Objection, your Honor.
9		THE COURT: Sustained.
10	ଦ	Do you know Guido Benigno?
11	A	Yes.
12	Q	Who is Guido Benigno?
13	А	He was Mr. Goldenberg's chauffeur, ran errands for
14	him, did	various chores for him.
15	Q	Did you see him with Mr. Goldenberg? Is that how
16	you met	him?
17	А	Yes. That's when I first met him.
18	Q	On these debentures that you prepared for Mr.
19	Goldenbe	erg, was any interest ever received on them by
20	Superior	Plans, that you know of?
21	А	I have no knowledge that anything was received.
22		MR. LITTLEFIEID: I have no further questions.
٤	CROSS EX	CAMINATION
24	BY MR. E	BERGER:
25	4	Mr. Leeds, my name is Mr. Berger, and I represent

Mr. Goldenberg. From the time that negotiations first started between First Standard and Mastercraft to the time that you left for Arizona, were you ever present at a meeting with Mr. Goldenberg, Mr. Gluskin, Mr. Dayon, in which Mr. Goldenberg asked Mr. Gluskin for cash as his share of the proceeds of the sale of the minority stockholders' stock?

A No.

Q Are you familiar with Rule 133 of the Securities Act?

A Yes, I am.

Q Will you please explain to the Court and jury to the best of your ability what you believe Rule 133 was back in 1967 and '68?

A Shares of stock of a corporation which are offered to the public must be either registered, according to the rules of the Securities and Exchange Commission, or the Securities and Exchange Act, unless they come under some exemption. There are exemptions, like an intrastate offering, a Reg A for a small issue and a no-action letter under which some shares may be exempt for sale, and then a Rule 133. A Rule 133 transaction is one in which corporation A purchases the assets of corporation B and issues its shares to the stockholders of corporation B whose assets have been acquired. The corporation B shareholders who get that stock can then sell their shares in a broker's transaction, that is through a normal broker's sale under

Leeds-Cross

Rule 154. The philosophy of that is that if a minor shareholder
who may be a shareholder of corporation B now nets stock of

corporation A, he should not have to live with it if he

my understanding.

who may be a shareholder of corporation B now nets stock of corporation A, he should not have to live with it if he doesn't want to and should be able to dispose of it. That's

Q If Mastercraft Electronics prior to the time of its merger only had one stockholder, that being Al Dayon, could there have been any free trading stock as a result of Rule 133?

A Yes. Again, 133 provided that a control person, one who was an officer, director, held more than ten percent of the stock, could sell only one percent of the amount of stock received on the purchase of the assets in a six-month period.

Q Outside of what is called the one percent exemption for controlled parties, if Mr. Dayon were the only stockholder of Mastercraft Electronics, could more than one percent of the stock have been sold without a registration statement every six months?

A I have to answer that in two parts. I have never been clear or satisfied that there could be a sale every six months rather than one sale in a six-month period and no more, and I think that any sale over the one percent would clearly have to be registered.

Q Therefore, Mr. Leeds, am I correct in stating that if Mr. Dayon were not the sole stockholder and if there were

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Leeds-Cross

what we call minority stockholders who had under ten percent of the stock each, that these minority stockholders might have an exemption under Rule 133 so that their stock could be sold, is that correct?

A That's my understanding.

Gluskin and Mr. Goldenberg and yourself anytime from the time that these negotiations started until you left for Arizona where Mr. Goldenberg told Mr. Gluskin or told Mr. Dayon to set up phony minority stockholders?

A No.

When was the first time that you learned, to the best of your recollection, that Mr. Dayon did not own 100 percent of Mastercraft Electronics?

A In probably October or November of 1967 when Gluskin and I were drafting the agreement of merger. Gluskin mentioned that there were shareholders besides Dayon and that there were several shareholders.

- At that time did he give you the name of those shareholders?
 - Not at that time, no. Later on.
- Did Mr. Goldenberg ever tell you from the time that the negotiations for the acquisition or the marger commenced to the date that it was completed that phony minority stock-

When you learned that there were minority stockholders in Mastercraft, did that lead you to make certain changes in the agreement between Mastercraft and First Standard?

In essence, Mr. Leeds, what were those changes and

Well, first of all, I provided in the agreement that the stockholders would also execute it, besides the corporation. There were lines for signature of stockholders, whoever they might be. I also provided in the agreement that if such stockholders having gotten 133 stock sole such stock, the first proceeds were to go first to pay some liabilities of First Standard, second, to finance Mastercraft's manufacture and import of the video tape recorder.

Do you recall how many shares of First Standard were outstanding in the hands of the public at that time? Prior to the merger?

You mean registered, investment or both?

Outstanding in the hands of the public and trading, registered.

Registered.

Or exempt and trading.

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Two things. One, that these shares could be possibly dumped on the market and depress the stock greatly, and, secondly, that this would be a windfall to those employee

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1h/1f Leeds-Cross 114

stockholders, but would do the corporation no good whatsoever.

If the stock of the corporation were to be used for further acquisitions, then the fact that the stock had been depressed by a minority stockholders selling would make it very difficult to make those future acquisitions, would it not? I am talking about stock for asset acquisitions.

Well, in my judgment, you would have to pay a great many more shares for the same, acquisition.

So that you would be diluting the stock, is that correct?

In effect, yes.

Q Did there come a time that an agreement was reached whereby you were to have some relationship to the sale of these minority stockholders' shares of stock?

Yes.

Will you please tell the Court and the jury what that agreement was?

That several of the employee stockholders authorized me to sell their shares which they received on the merger and to use the proceeds to apply them as follows: one-third to be turned over to Gluskin to pay the taxes for any gain on the sale, profit; I think one-half was to be loaned to or to purchase stock of Mastercraft; and the balance to be invested for them in however I chose.

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Prior to the time that you left for Tucson, Arizona,

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121a 116 Leeds-Cross 1h/1f do you recall a company called Sultana Hoisery? There are two periods. Are you talking about the period when I left for vacation or when I left permanently? Prior to the time that you left permanently, did 0 Mr. Goldenberg bring you a draft agreement between the corporation, the new corporation that was formed, and a company called Sultana Hoisery? I will have to answer it this way, Mr. Berger. There was a proposed agreement brought to me. I believe it was Sultana Hoisery. I don't know who the other party was. I don't recall. Do you recall a proposed agreement between Superior Q Plans and a hoisery company? No. Do you recall a proposed agreement between a company that manufactured a device for measuring out glasses of beer, I think the name of the device was called "Beer-Boy," and the corporation Superior? Again, I recall a proposed agreement of that kind.

I don't recall that it was or was not with Superior Plans.

Mr. Leeds, do you recall testifying in a different proceeding on October 13, 1971?

Yes.

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At that time you were under oath, is that correct?

1	lh/lf	Leeds-Cross	117
2	А	Yes.	
3		MR. BERGER: Mr. Littlefield, if you wish,	page 79
4	of the tr	anscript. Line 20.	
5	Q	This is referring to legal work you were do	ing for
6	Superior	during the period around March of 1968	
7		MR. LITTLEFIELD: I would ask not to prefac	e it with
8	what it r	efers to and just as the question.	
9		MR. BERGER: Then I would have to go back ar	nd
10		MR. LITTLEFIELD: Right. Whatever the quest	ion and
11	answer is	is fine. Go back and read whatever Mr. Bor	ger
12	wants.		
13		THE COURT: Are there one or two questions	which
14	would put	it in the proper frame, Mr. Berger?	•
15		MR. BERGER: I am trying to see.	
16	Q	Do you recall being asked the following ques	tion:
17		Now, approximately when did you gi	ve that
18	to Mr. Go	ldenberg?	
19		"A I don't recall precisely. Somewhe	re around
20	March 10th	h, 12th, somewhere in that vicinity"	
21		MR. BERGER: Your Honor, I can't help the w	1tness
22	this way.	I am going to have to go back further. I	beg
23	your Honor	r's pardon.	
24		THE COURT: If it is necessary, why, we will	l do 1t
25	that way.		

	123a	
1	1h/lf Leeds-Cross 118	
2	MR. BERGER: Page 78.	
3	Q "Q Now, do you know approximately how many	
4	debentures were drafted by you and basically what was given to	
5	whom in connection with these debentures?	
6	"A Well, when you say drafted, there was only	
7	one final draft, but that was reproduced, Xeroxed.	
8	"Q One draft which was reproduced?	
9	Yes.	
10	"Q Now, do you know what happened to the	
11	final plus the reproduction?	
12	"A Several. I don't recall now precisely	
13	how many at Mr. Goldenberg's direction I had my girl insert	
14	John Gluskin. I don't recall whether we put in dates or did	
15	not. There would have been two dates, one day of issue and	
16	the date of redemption of maturity, which would be two years	
17	later. I know that I signed several of them as secretary and	
18	I gave them to Mr. Goldenberg.	
19	"Q Now, approximately when did you give that to	
20	Mr. Goldenberg?	
21	"A I don't know precisely. Somewhere around	
22	March, 10th, 12th, somewhere in that vicinity.	
23	"Question" this is the question I am referring to	
24	now, Mr. Leeds "Other than what you have just described to	
25	the jury, did you have anything else to do with Superior Plans?	
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during that week or so, certainly before the end of March,
Mr. Goldenberg had brought two things in which he said Superior
Plans would be involved. One was a draft of a contract prepared by a law firm which the stockholders of the corporation
were going to sell their share, part of their interest.
There was a hoisery company, and I don't recall the name, but
he asked me to look at that and call it or get in touch with
the law firm and discuss this contract. The other was a
draft of an agreement with some company which owned or seemed to
own a device which measured the amount of beer which came out
of a tap so that the glass didn't overflow, I gather. Those
were the only other two things that I looked at."

Well, two things. I recall that again

Does that refresh your recollection, Mr. Leeds?

A It does, and still I must answer similarly, and I am not fencing with you, Mr. Berger. If my recollection at that time was that coldenberg said to me that these were for or on behalf of Superior Plans, that was probably so. What I said was I did not recall in the agreements any mention of Superior Plans as the other party, and I don't today.

- Q Do you know a company by the name of Down Communications
- A Only by name.
- Q Did you ever have any discussions with Mr. Goldenberg with regard to Down Communications?

1	1h/1f	Leeds-Cross	120
2	А	I don't recall any such.	
3	Q	Do you know a company called Transcontinents	al
4	Investing	Corporation?	-
5	Α	Ves.	
6	Q	Do you know a Howard Weingrow?	
7	٨	Yes.	
8	Q	Will you please tell the Court and jury when	n you
9	first lear	ned of Transcontinental and Mr. Howard Weing	grow?
10	Α	I first heard of Transcontinental when Mr.	Goldenberg
11	told metha	at Transcontinental was going to take a posit	ion in
12	First Standard or have an option for some shares. I met		
13	Howard Wes	Ingrow in San Francisco when we both got on t	the same
14	plane to g	go to Japan.	
15	Q	Transcontinental, was that a company on the	New York
16	Stock Exch	nange?	
17	A	Yes.	
18	o o	Was it a major company?	
19	А	In my judgment they were a large conglomerat	te.
20	Q	Why did you go to Japan with Mr. Weingrow?	
21	A	Before Transcontinental really took & firm p	position,
22	I think th	ney wanted to know that there was a possibili	ity of
23	bringing o	out a commercial video tape recorder which co	ould be
24	manufactur	red in Japan, and Weingrow and I went over fo	or the
25	purpose of	negotiating a contract with a Japanese mar	ufacturer.

1	1h/1f	Leeds-Cro. 121
2	Q	Was that on the video tape recorder that First
3	Standard	ultimately obtained the rights in?
4	Α	Yes.
5	Q	Is that the video tape recorder that eventually
6	became pa	art of the assets of Mastercraft?
7	Α	Yes.
8	Q	Do you recall the reasons that Mr. Goldenberg
9	wanted t	he debentures that we referred to, the convertible
10	debentur	es?
11		MR. LITTLEFIELD: I object to the form, your
12	Honor.	
13		THE COURT: Sustained.
14	Q	Had Mr. Goldenberg told you that he was desirous
15	of raisi	ng capital for Superior Plans and that he was going
16	to put 1	n corporate assets into Superior of 15,000 shares of
17	Mastercra	aft, 200,000 shares of Mastercraft, some Fotochrome
18	stock, s	tock called Acme, I believe Acme Missile, and was going
19	to try to	exchange shares of Superior for advertising agencies
20	A	Shares and maybe debentures.
21	Q	Had Mr. Goldenberg told you that?
22	А	Yes.
23	Q	And that was the reason he stated to you that he
24	wished th	he debentures, is that correct?
25	A	No. He told me that he was also going to sell some

"what you have said already?

"A Well, yes. In trying to construct the drafts, some instrument for him to use, I would say, 'What do you want it for, what are you going to do with it?' that's one of the things I needed to know in order to make it intelligent. He told me, and this was after Superior Plans was formed, he told me that he intended and expected to put certain things into Superior Plans, certain assets, certain assets into Superior Plans, and that in order to fund Superior Plans and some of the things he expected or intended to do, capital would be required, and he expected and intended to sell some of these what we finally called convertible debentures, in order to provide funds to Superior Plans. That's about all else I can recall.

"Q Did he say what kind of assets he was puttig

"A He was putting in 15,000 some shares of

Mastercraft which he had, he was going to put in another 200,000

shares of Mastercraft, he mentioned some other assets -- you

mean do I recall what he said?

"Q Yes.

"A He said there was some Fotochrome stock as to which he had rights or options, there was another company, Acme something or other, in which I think he had some interest,

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advertising agencies. He hoped to put them together, he hoped to bring them into Superior Plans in exchange for stock and debentures.

"Q Stock for what?

"A Of Superior Plans."

Does that testimony that I just read to you an accurate refletion of what was told to you by Mr. Goldenberg?

A I believe it is.

Q Would you characterize Superior Plans as a closed comporation?

As we know it, yes.

Q If the minute book and stock ledger are not kept up to date and are not filled in, does that mean that the corporation has done no business?

MR. LITTLEFIELD: Objection, your Honor.

THE COURT: Sustained.

Q Would every bit of business done by a closed corporation be reflected in their stock books?

MR. LITTLEFIELD: Objection, your Honor.

THE COURT: Sustained.

of Superior Plans to maintain the stock ledgers and stock

1	1h/1f	Leeds-Cross	125
2	Α	Yes.	
3	Q	For about he any corporations during the	ne time
4	that you	have been dicing law have you done that	it?
5		MR. LITTLEFIELD: I object, your Honor.	Are we
6	going back	k to the whole time he practiced law since	1946?
7		MR. PERGER: Yes.	
8		THE COURT: I think the area in which you	are going
9	to lead h	im is not going to be admissible. At the	next re-
10	cess, if	you want to make an offer of proof, I will	L take 1t
11	in the ab	sence of the jury.	
12	Q	Is there anything unusual in not having t	the corporate
13	books of	Superior Plans up to date?	
14		MR. LITTLEFIELD: Objection to the form.	
15		THE COURT: Sustained.	
16	Q.	Is there anythin; illegal about not having	ng the
17	corporate	books of Superior Plans up to date?	
18		MR. LITTLEFIELD: Objection, your Honor.	
19		THE COURT: Sustained.	
20	Q	Did Mr. Goldenberg tell you not to keep t	the books up
21	to date?		
22	А	No.	
23	ą	Do you know what a Black Beauty is in con	rporate out-
24	fits?		
25	A	In corporate outfits, yes.	

1	1h/1f	Leeds-Cross 126	5
2	Q	The corporate outfit of Superior Plans, what wa	38
3	that call	ed?	
4	Α	I'd like to look at it again. It probably was	one
5	of those	sots.	
6		(Pause)	
7	Α	(Continuing) It doesn't say, Mr. Berger, but I	1
8	believe i	t was one of those so denoted, Black Beauty set	
9	Q	Those corporate outfits basically are printed b	y .
10	Julius Blo	umberg and they are a form, are they not,	
11	basically	?	
12	Α	By various publishers.	
13	Q	Is that particular one a Julius Blumberg form?	
14	Α.	Yes.	
15	Q	Generally, what you do is you fill in certain p	pages
16	in the for	rm to bring the minutes up to date, is 'that corn	rect?
17	А	That's correct.	
18	Q	If you don't fill in those pages, Mr. Leeds, do	es
19	the corpo	ration lose its corporate entity position?	
20	А	No.	
21	Q	It is still a corporation?	
22	A	Yes.	
23	Q	Can the company conduct business without filling	ng in
24	those pag	es?	
25	A	Yes.	

- 11			
1	1h/1f	Leeds-Cross	127
2	Q	Back in 1968, a closed corporation, one	stockholder,
3	to start	with, do you know how many directors were	required
4	by law?		
5	Α	I think I do.	
6	Q	How many?	
7	А	One.	
8	Q	How many officers?	
9	А	One.	
10		And then only one stockholder, right?	
11	А	Right.	
12	Q	Therefore, if a secretary were appointed	or elected,
13	in effect	he would be elected by that one stockhol	der, would
14	he not?		
15	A	Yes.	
16		MR. LITTLEFIELD: Objection to form.	
17		THE COURT: I will permit it.	
18	Q	Therefore, you	
19		MR. LITTLEFIELD: I am sorry, I didn't h	ear if there
20	was an an	swer.	
21		THE COURT: He said the answer was yes.	
22		THE WITNESS: Yes.	
23	4	Mr. Goldenberg as that stockholder back	in 1968
24	could have	e replaced you at any time, could he not	ha ve ?
25	A	Yes.	

1	lh/lf Leeds Cross 128
2	Q He could have appointed another secretary at any
3	time, could he not have?
4	A Yes.
5	Q He did not need your particular name to open an
6	account at the Chelsea, did he?
7	THE COURT: You mean under the situations that existed?
8	He did to have the bank accept a corporate resolution, didn't
9	he? The secretary had to certify to the resolution of the
10	corporation, didn't he?
11	THE WITNESS: I believe so. Whether the bank
12	required two different signatures, I don't recall.
13	THE COURT: In any event, the bank, in order to
14	open a corporation account, requires a resolution?
15	THE WITNESS: Yes, sir.
16	THE COURT: The resolution has to be certified
17	by the secretary of the corporation, isn't that the provision?
18	THE WITNESS: Right.
19	If Mr. Goldenberg wishes, he could have gone ahead
20	and appointed his wife or some relative or some employee or
21	secretary and gone down to the Chelsea and opened an account
22	without your signature?
23	MR. LITTLEFIELD: Objection.
24	THE COURT: Yes, I will sustain that. I think you
25	have established the prodicate

1	lh/lf	Leeds-Cross 129	
2	Q	If Mr. Goldenberg wanted to, he could have named	
3	a new seco	retary?	
4		THE COURT: We have been through that. He	j
5	answered 1	that. He said yes.	
6	Q	That new secretary, once being appointed by Mr.	
7	Goldenberg	g, could have gone to the Chelsea and signed as	
8	secretary	, could he not have?	
9	Α	I suppose so.	
10	Q	And there was nothing you could do to stop that,	was
11	there?		
12	Α	No.	
13	Ç	Did Mr. Gluskin ever take his debentures and turn	,
14	them in to	you and ask for stock to be issued?	
15	А	No.	
lu	Q	Did Mr. Gluskin ever call you and say he turned t	hem
17	in to Mr.	Goldenberg and ask for stock to be issued?	
18	А	No.	
19	વ	The fact that stock certificates have not been is	sued
20	cut of the	at particular book, does that mean that there are	no
21	stockholde	ers?	
22		MR. LITTLEFIEID: Objection, your Honor.	
23		THE COURT: Sustained.	
24	Q	Is there anything in that book to tell you that	
25	there are	no stockholders?	

1	lh/lf Leeds-Cross 130
2	MR. LITTLEFIELD: Objection. I don't understand
3	that question.
4	THE COURT: I think the book speaks for itself,
5	doesn't 1t?
6	THE WITNESS: I think so, your Honor.
7	THE COURT: Yes, sustained. The book reflects
8	that the only stockholder is Mr. Goldenberg, isn't that
9	correct?
10	THE WITNESS: There is nothing in the book at all.
11	THE COURT: Nothing in the book to reflect any
12	stockholder?
13	THE WITNESS: No entry of any kind.
14	MR. BERGER: That's the point, your Honor.
15	Q So without any entry being in that book, could there
16	still be stockholders?
17	A Yes.
18	THE COURT: Who has the stock book, the stock
19	register?
20	THE WITNESS: It is part of the whole minute book.
21	THE COURT: Are there any stocks issued? There are
22	no stocks issuid?
23	THE WITNESS: No certificate was ever issued by
24	me.
25	THE COURT: By you?

- 1					
1	1h/1f	Leeds Cross 131			
2		THE WITNESS: Yes, sir.			
3		THE COURT: All right. I will stop there.			
4	Q	This convertible			
5		THE COURT: In order to have stock iss ed, it would			
6	have to b	e signed by the secretary?			
7		THE WITNESS: Or the treasurer or somebody, yes.			
8	:	This convertible debenture, isn't it a fact that			
9	those things are so common in business that there is a form				
10	book Rafk	in and Johnson which you could copy one out of, if			
11	you wanted to?				
12	A	There are -			
13		THE COURT: There are lots of form books, are there			
14	not?				
15		THE WITNESS: Lots of form books and many forms, yes.			
16	Q	Isn't it a fact that this particular debenture that			
17	you drew	was a modification of one that you studied in Rafkin			
18	and Johnson?				
19	А	No.			
20	Q	You made this one up all by yourself?			
21	٨	It is an adaptation of one that I had used several			
22	years before in a different matter.				
23	Q	Had you gotten that one out of Rafkin and Johnson?			
24	A	No, I got that from a different source, too, Mr.			
25	Berger.				

Q Did Mr. Goldenberg tell you, Mr. Leeds, in connection with Superior Plans, that he was going to withdraw any money that was put into Superior Plans and convert it into cash almost immediately upon it going into Superior Plans?

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lh/lf Leeds-Redirect

MR. BERGER: Objection, your Honor.

THE COURT: No, I will permit it.

A No.

Q Yesterday you talked about these convertible debentures and again this morning you talked about convertible debentures on cross examination by Mr. Berger. You had mentioned yesterday that there was a letter, in fact a copy of that letter is in evidence, from Mr. Gluskin to the corporation exercising the conversion right. Do you recall exactly how that letter came to be, what the conversation was?

THE COURT: Do you want to see the letter? Exhibit

A I can recall it, Judge. There was a meeting in my office between Mr. Gluskin and Mr. Goldenberg, and Mr. Goldenberg told Gluskin he was going to sell him some of these convertible debentures, and in that same meeting he asked Gluskin for a letter saying that he was exercising -- that he, Gluskin, was exercising his right to convert. Gluskin wrote it out on a piece of paper, maybe yellow pad --

Q In his hand?

A In his hand, and said he would follow it up with a typed letter from his office on his letterhead when he got back to his office.

Q Did you see him hand to Mr. Goldenberg this hand-

1	1h/1f	Leeds-Redirect	136
2	written o	ne on legal paper?	
3	Α	Well, whatever paper it was on, yes, he	handed it
4	to him.		
5	Ų	Thereafter, was an original in other	words, a
6	letter on	Gluskin's letterhead, signed by Gluskin,	sent to
7	you?		
8	А	Yes.	
9	E	What did you do with it?	
10	Α	I gave it to Mr. Goldenberg.	
11	Q	Was a copy made of that letter? Referri	ing to
12	Governmen	t's Exhibit 14, is that a copy, in other	words, a
13	copy but	a carbon copy or a copy typed up?	
14	Α	No, I believe this is a carbon.	
15		MR. LITTLEFIELD: I have no further ques	stions.
16	RECROSS E	XAMINATION	
17	BY MR. BE	RGER:	
18	Q	Do you know if Mr. Gluskin ever took the	debenture
19	and turne	d it in for the stock?	
20	Λ	I have no idea.	
21		MR. BERGER: I have no further questions	
22		THE COURT: You may step down.	
23		(Witness Ex	ccused)
24		MR. LITTLEFIEL. Your Honor, may I take	e a moment
25	ou to bo	nd some of the exhibits which have come	into the cas

	142a
1	1h/lf 137
2	during the first two witnesses to the jury? We did not do that
3	while the witness was on the stand.
4	THE COURT: What exhibits do you want to
5	MR. LITTLEFIELD: I'd like to hand the 1968 tax
6	return.
7	THE COURT: All right, Exhibit 1.
8	MR. LITTLEFIELD: The personal tax return of Mr.
9	Goldenberg.
10	THE COURT: What else do you want to show the jury?
11	MR. LITTLEFIELD: I will wait on the Superior Plans
12	THE COURT: Are you calling another witness while
13	these exhibits are being -
14	MR. LITTLEFIELD: Yes. There are some other exhibits
15	THE COURT: What other exhibits
16	MR. LITTLEFIELD: The certificate of incorporation of
17	Superior Plans.
18	THE COURT: All right. One at a time.
19	TR. LITTLEFIELD: Exhibit 9.
20	THE COURT: All right, start that in the back row.
21	What else do you have?
22	MR. LITTLEFIELD: The record book, your Honor,
23	the resolutions to open the Central State Bank account and
24	the Chelsea Bank account. To save time, I could wait on those,
25	your Honor, until the bank officer is here. That will be all

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lh/lf Dayon-Direct 138
at this particular moment, your Honor.
THE COURT: All right, do you want to call your
witness?
MR. LITTLEFIELD: Yes. The government calls Mr.
Dayon.
A L D A Y O N, called as a witness on behalf
of the Government, having been first duly sworn, was
examined and testified as follows:
THE COURT: Proceed.
MR. LITTLEFIELD: Shall I wait just a moment while
the jurors
THE COURT: I don't think so. You can continue to
look at the exhibits. I think it is all right.
JUROR NO. 2: I'd like to look at this further.
THE COURT: Let me suggest this to the members of
the jury, that after the case is submitted to you, you will
have the opportunity to fully examine all exhibits at that
time. I think right now for the moment a cursory examination
of them is all that is required to go along with what we are
doing presently. If I feel that it is necessary for you to
study an exhibit while a witness is testifying, why, I will
give you adequate time to do it in here. But I think all
that's necessary now is a cursory examination.

DIRECT EXAMINATION

		1770	
1	1h/1f	Dayon-Direct	39
2	BY MR. LIT	TTLEFIELD:	
3	Q	Mr. Dayon, where were you born?	
4	А	New York City.	
5	Q	In Manhattan?	
6	Λ	Manhattan.	
7	٠,	Where did you go to school?	
8	. А	In Brooklyn.	
9	Q	How much school did, you attend?	
10	А	Up to junior high school.	
11	Q	Did you go to high school?	
12	Α	No.	
13	Q	Did there come a time after you got out of just	nior
14	high that	you went to work as a stock boy?	
15	A	Yes.	
16	0	Where was that?	
17	A	New York City.	
18	Q	After that what did you do next?	
19	A	I worked in a retail store.	
20	ę	Where was that?	
21	A	In Hackensack, New Jersey.	
22	Q	What kind of business was that in Hackensack?	
23	A	Children's wear and infants.	
24		MR. BERGER: The defendant Goldenberg concedes	that
25	Mr. Dayon	is an expert in retailing, if that is what Mr.	Little

1	1h/1f	Dayon-Direct	140
2	field		
3		THE COURT: Are you trying to establish	
4		MR. LITTLEFIELD: I hadn't been trying to	to establish
5	that. I	was establishin; the background that led	him into thi
6	case, but	I will be glad to	
7		THE COURT: Is it your purpose to show	the general
8	background	d?	
9		MR. LITTLEFIELD: The purpose is to show	w the back-
10	ground.		
11	Q	In Hackensack, what was the business?	
12	Α	Retail of children's wear.	
13	Q	What was your connection with the busin	ess?
14	A	I was a salesman.	
15	Q	Then after Hackensack, what was the nex	t
16	A	Then I went into the retail business.	
17	0	. Where?	
18	A	In Hackensack. I bought the store that	I was in.
19	Q	Then after that, where did you go?	
20	^	Then I went to New York City in the chi	ildren's
21	wear manu	ufacturing.	
22	Q	Did you have stores then?	
23	A	Then I had retail stores on 34th Stree	t and 42nd
24	Street.		
25	6	Were you the owner of these stores?	

1	1h/1f	Dayon-Direct	141
2	A	My brother and I.	
3	Q	Did there come a time when you started	importing
4	radios fr	om the Far East?	
5	А	Yes.	
6	Q	For sale at these stores or other store	es?
7	A	To these stores and to other stores.	
8	Q	What was the name of that company?	
9	А	Starlight Electronics.	
10	Q	Did there come a time after Starlight	that you
11	became in	volved with a company called Mastercraf	t Electronics
12	А	Yes.	
13	6	Who was involved in that company with	you?
14	A	My brother and Mr. Sutton.	
15	Q	Who owned the stock?	
16	Д	My brother at the time owned the stock	, and he had
17	a heart a	ttack and I bought his share.	
18	Q	Approximately when was this that Maste	rcraft began?
19	A	Approximately I think 1965.	
20	Q	What was your role in Mastercraft? Wh	at was your
21	function	in the company?	
22	Δ	I would go to Japan and the Far East a	nd bring in
23	products,	design them and subcontract them and b	ring them
24	into the	United States.	
25	0	How was Masterorest financed?	

1	1h/1°	Dayon-Direct 142
2	Α	We had a factoring arrangement with L.F. Dommerich,
3	Chemical F	nk, New York Turst.
4	Q	Can you explain in as simple terms as possible
5	what a fac	toring arrangement is?
6	Α	Yes. They would guarantee our accounts receivables
7	and give u	s a line of credit that we needed and opened up
8	letters of	credits to our manufacturers.
9	Q	Would you assign to them your assets
10	Α	All our assets were assigned to them.
11	ર	And your accounts receivables?
12	А	Receivables and inventory.
13	Q	They would issue you letters of credit to banks,
14	is that r	ght?
15	Α	Yes.
16	6	They would guarantee your accounts receivables?
17	Α	Yes.
18	Q	In turn they would get
19		MR. BERGER: Objection, your Honor.
20		THE COURT: Yes, sustained.
21	Q	Why would they do this? What were they getting
22	Α	They get a percentage of our volume.
23	Q	Are you familiar with a company called First Standard
24	A	Yes.
25	Q	What was that, what products was that company involve

1	1h/1f	Dayon-Direct	143
2	with?		
3	Α	First Standard had the rights to a video t	ape recor
4	ing syste	m which uses plain ordinary tape.	
5	° ,	In connection with First Standard, did you	come to
6	know Bern	ard Goldenberg?	
7	. A	Yos.	
8	Q	Do you see him in Court?	
9	Δ	Yes.	
10		MR. BERGER: Identification conceded, your	Honor.
11		THE COURT: Very well.	
12	Q	What was Mr. Goldenberg's relation to Firs	it
13	Standard	then?	
14	Ą	Ho was a stockholder in First Standard and	he was
15	the gentl	eman that did the merger between Mastercraf	't and
16	First Sta	ndard.	
17	Q	Directing your attention to late 1967, wha	t was
18	occurring	then in connection with this merger?	
19	A	The attorneys were making the merger after	I told
20	them I wa	s in Japan and saw the video tape recording	system,
21	and I am	very happy with it, I knew the company that	, was
22		, and that I would like to see the merger a	
23		e the attorneys were arranging the merge	
24		11 in Japan. I came back the end of Decemb	

made the merger.

1	1h/1f	Dayon-Direct 144
2	Q	Who were the attorneys who were working on this
3	merger?	
4	А	There was John Gluskin, Mr. Leeds and two other
5	attorneys	that had stock in the company.
6	ų	When you came back from Japan, the papers were pre-
7	pared and	the merger was signed, is that right?
8	Α	Yes.
9		MR. BERGER: Objection, your Honor.
10		THE COURT: Yes, you are leading.
11	Q	Had you ever done or been involved in a merger
12	before?	
13	A	No.
14		MR. BERGER: Objection, your Honor.
15		THE COURT: No, I will permit it.
16	Q	After the merger between First Standard and Master-
17	craft, wha	at was the name of the company that survived?
18	. A	Mastercraft.
19	Q	The idea was what? In other words, what was
20	the combi	nation what was the strength that was going to be
21	brought to	o the one company by the two companies, in your view?
22	A	We had the manufacturing know-how and the marketing
23	experience	е.
24	Q	The marketing experience in this country?
25	A	Yes.

1	1h/1f	Dayon-Direct 145
2	(And tr had?
3		They actually had the rights for the video tape record
4	ing s	rstem.
5	(After the merger, did you see Mr. Goldenberg?
6		Yes.
7.	. (Where?
8		He had an office in our place.
9	(Where was your place?
10		On 1115 Broadway.
11	(That was the Mastercraft offices?
12		Mastercraft offices and shipping department and re-
13	pair	and service.
14	(Did the company need funds, did the new Mastercraft
15	needs	funds to manufacture the video machines?
16		Yes.
17_		Did the factor need money so that they would issue
18	lette	rs of credit for you?
19		In order for them to increase their line of credit,
20	they	would have to have more funds.
21		So was there a meeting at Mastercraft about raisin;
22	money	
23		Well, we told John Gluskin that, you know, we needed
24	more	funds. He was in charge of trying to raise funds for
25	us.	

		151a	
1	1h/1f	Dayon- Trect	146
2	Q	Who was he?	
3	Α	He was the attorney for the corporat	tion.
4	Q	Directing your attention to when you	got back from
5	Japan and	the mergre was signed, was there a	meeting on this
6	subject?		
7	А	Yes.	
8	Q	Who was present at that meeting?	
9	. А	John Gluskin, Jim Farnell, Barker as	nd myself.
10	Q	Anybody else?	
11	А	No.	
12	**	What occurred at that time? What we	as said at that
13	meeting?		
14	Α	John Gluskin said that there is a p	ossibility of
15	raising f	unds through freeing up shares of st	ock that belonged
16	to the wo	rkers that worked in the place, Mr.	Farnell, Barker,
17	the accou	ntant, people that contributed time,	efforts, to the
18	corporati	on, and he would know more about it	after he would
19	get a le	tter from an attorney, an opinion le	tter, that this
20	stock cou	ld be free. Jim Farnell and I said	"Fine, when
21	this happ	ens we would like to be able to do i	t." Sometime in
22	February		
23	Q	Did he tell you anything about how	the stock was
24	going to	be sold?	
25	А	Yes. He said Bernie Goldenberg wou	ld help
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1	1h/lf Dayon-Direct 147
2	MR. BERGER: Objection, your Honor.
3	THE COURT: Yes, sustained.
4	Q Was there anything else in that conversation about
5	the stock?
6	A He said that Bernie Goldenberg
7	MR. BERGER: Objection, your Honor.
8	THE COURT: Sustained.
9	MR. LITTLEFIELD: May I direct the Court's attention
10	to a rule?
11	THE COURT: Please do.
12	MR. LITTLEFIELD: Your Honor, I direct the Court's
13	attention to Rule 801 (2) (3) and the committee notes thereon
14	which are at page 2801.
15	THE COURT: I have the rule in front of me.
16	MR. LITTLEFIELD: The notes are what I am specifically
17	referring to.
18	THE 'OURT: My copy of the notes is not here.
19	MR. LITTLEFIELD: This is the mote.
20	(Pause)
21	THE COURT: I will give it with a limiting instruc-
22	tion.
23	Mr. BERGER.
24	limiting instruction because
25	a the would have

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1	lh/lf Dayon-Direct 148 .
2	particularly under the rule. Under the rule it is not ad issi-
3	ble.
. 4	THE COURT: Why don't you go on to something else and
5	we will come back to this.
6	MR. LITTLEFIELD: Your Honor, three will be a number
7	of similar points as we go through this testimony.
8	THE COURT: I am going to ask the jury to file out.
9	Just leave those documents on your seats there, unless you
10	have any objection to the jury taking there into the jury
11	room and examining them while they are in there.
12	MR. BERGER: I have no objection.
. 13	THE COURT: You can take them in there and use
14	your time that way.
15	(Jury not present)
16	THE COURT: You can go back into the witness
17	room.
18	(Witness excused)
19	THE COURT: These are statements made by Goldenberg
20	to Gluskin?
21	MR. LITTLEFIELD: By Gluskin to Dayon, that's
22	right, your Honor, and they are admissible against Goldenberg
23	THE COURT: Gluskin is dead?
24	MR. LITTLEFIELD: That's right; therefore, unavailable.
25	They are admissible under that exception, your Honor. Normally,

the normal way framed is in terms of the co-conspirator excep-

THE COURT: Joint venture.

MR. LITTLEFIELD: Joint venture, as the committee rules point out, the joint venturer is considered as a co-conspirator for purposes of this rule while the --

THE COURT: I am aware of that.

MR. BERGER: The fact remains that this very case was tried and Mr. Goldenberg was found not guilty; therefore, not a co-conspirator. So we have got a judgment of acquittal. If he is not a co-conspirator, then it certainly does not fall within the exception. It cannot be used as per Mr. Goldenberg. Or else, we are going to be retrying the Mastercraft case which your Honor has already ruled we are not going to retry. If this were the Mastercraft case, I have no doubt that the statement would be admissible with a limiting instruction, but after a man is found not guilty by a jury after a trial, we can't continue to call him a co-conspirator and keep using the same exception.

THE COURT: He certainly isn't a co-conspirator for purposes of the charge before me.

MR. BERGER: True, your Honor.

MR. LITTLEFIELD: Who isn't, your Honor?

THE COURT: Anybody.

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MR. LITTLEFIELD: Certainly there is --

THE COURT: There is no allegation of a conspiracy
here to evade the income tax laws or to file a false statement.

MR. LITTLEFIELD: That's true, your Honor. But the question is whether there is a joint venture going on and whether one is the agent for the other.

THE COURT: If we were trying the Mastercraft case, it would be admissible with a limiting instruction.

We are not trying that case here.

MR. LITTLEFIELD: I don't think that matters, your Honor. The question is was there a joint venture. The nurpose of the rule is that --

THE COURT: Then we are going to be trying the

Mastercraft case all over again because the jury is going to

have to determine whether or not there was a conspiracy in

order to determine whether or not this statement is admissible.

MR. LITTLEFIELD: No, they merely have to find that someone was an agent of the other, that they were working together in joint venture.

MR. BERGER: Your Honor, may I explain that rule as I understand it? Sometimes there are cases where the government leaves out a conspiracy count but there is a scheme and artifice to defraud. In those cases they hold that those people involved in the scheme and artifice to defraud, although

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 there is no conspiracy count, they are joint venturers and their statements shall be treated the same as if there were a conspiracy.

THE COURT: I think we are all aware of that. Mr.

Littlefield, as I understand it, says that anytime a joint venture is involved, such as the formation of the merger here, and so forth, that any statement made by anybody in connection with that is admissible as a statement of an agent. That's your position, isn't it?

MR. LITTLEFIELD: I wouldn't go so far as to say anybody, but surely when it is as close as this, yes, your Honor.

THE COURT: That is what you are claiming, that anybody that was involved in the merger, and so forth, that any statement made in connection with that merger is admissible.

MR. LITTLEFIELD: That's right, your Honor.

MR. BERGER: I strongly urge, your Honor, that that is not a proper interpretation. That would be an abortion of the rule. The rule was intended for the purposes of schemes and artifices to defraud in which conspiracy counts are not set forth, in which they simply say there was a scheme and artifice to defraud, among, and they name the individuals, and others. Those people are considered joint venturers, not co-conspirators, and the same exception applies to them as applies

to co-conspirators. But it certainly does not mean that if

people get together for some legal transaction, they become

agents for one another. They are only agents for one another

or joint venturers if there is something done in furtherance

of a fraud, and that is the Mastercraft case, your Honor.

THE COURT: Subdivision E, Mr. Littlefield, says a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

MR. LITTLEFIELD: That's right, but I referred -THE COURT: We are going to have to try the conspiracy
question.

MR. LITTLEFIELD: I referred to the house committee report which says that while the rule refers to a co-conspirator, it is this committee's understanding that the rule is meant to carry forward the universally accepted doctrine that a joint venturer is considered as a co-conspirator for the purpose --

THE COURT: I understand that, but then the joint venture is the merger.

MR. LITTLEFIELD: There doesn't have to be anything illegal about it, your Honor.

MR. BERGER: (th, there certainly does, your Honor.

Conspiracy is illegal, but an artifice and scheme to defraud

which the government has been using now in many of its indict
ments, leaving out the conspiracy count, that was what was meant

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to be cover i, because there was some question as to whether there was case law that was divided both ways, the circuits were divided. Was one joint venturer bound to be covered, because there was some question as to whether -- there was case law that was divided both ways, the circuits were divided. Was one joint venturer bound by the statement of another?

THE COURT: I have no problem with that if we were trying that case here. I have done that before and allowed it in. Is there anything that you can do with this witness at this time and reserve on this line of questioning which I will resolve at the recess, or does it have to be resolved right at this moment? That's all I want to find out at the moment. My present intention now is that I am not satisfied that it is admissible, and I want to be certain of it before I rule definitively on it. I am just wondering if there is something further that you can do with this witness, or am I going to have to resolve this question right now by looking at it a little more deeply than what I have just done already?

MI LITTLEFIELD: May I just look at my notes and see where I can go?

THE COURT: Surely.

(Pause)

MR. LITTLEFIELD: Your Henor, what we could do I

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suppose is interrupt his testimony and put on one of the bank -- we could take an early lunch at 12:15.

THE COURT: We have lots of problems. I am not going to take an early lunch. We have the swearing in of Judge Gotells at 4:15 this afternoon which I don't have to attend but which I would like to, if possible.

MR. LITTLEFIELD: I think I could --

THE COURT: Let's resolve it now. We will recess.

MR. LITTLEFFELD: I will go back to my office and get some cases on it, if that would be helpful.

THE COURT: Either way.

MR. BERGER: I wish I could go back to my office and do the same.

THE COURT: There is a library on the 25th floor. (Recess)

THE COURT: You had something, you said, Mr. Berger?

MR. BERGER: Yes, your Honor. United States versus

Sidman, which is 470 Fed. 2nd 1158 at page 1171. This is a

Ninch Circuit case in which it holds that that is the twin

brother of the conspiracy exception, and it must be in furtherance of an illegal act. The case in the Second Circuit, USA

vs. Alsondo, 486 Fed. 2nd 1339 at page 1347, a 1973 Second

Circuit case. In addition to that, the very fact that Mr.

Goldenberg was found not guilty in that case is very relevant

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which it is not admissible, the fact that he was found not guilty shows that he was not acting as a conspirator or joint venturer in furtherance of an illegal act. The case where it says it is the twin brother of the conspiracy exception shows that it must be in furtherance of an illegal act.

THE COURT: Why isn't this admissible if there is proof that there was, in fact, an agency and one acts as the agent of another, whether it is criminal or not criminal; I don't think it makes any difference?

MR. BERGER: Because of the fact, your Honor, that the defining of -- the cases so hold that it makes a difference. The cases hold that it must be in furtherance of a scheme or artifice to defraud and that you need not have a conspiracy count.

THE COURT: I think 801 (d) (2) (D), if that predicate can be established, then I think it is admissible.

MR. BERGER: I urge upon the Court that it is not admissible and it will probably be reversible if it goes in. In addition to that, if the Court is to allow it in, then I have the right to show that Mr. Goldenberg on that testimony of Mr. Gluskin was found not guilty.

THE COURT: Mr. Littlefield?

MR. LITTLEFIELD: I have handed up to the Court the

relevant cases, I think, and in that memo I wanted to draw
the Court's attention to the two Jearned Hand quotations which
I think -- I didn't give either case to your law clerk,
but the quotation is there. That's all, your Honor.

THE COURT: I think I will take proof, perhaps there is sufficient in the record to indicate it, but I think if you want to offer any additional proof with respect to the quest-tion of the agency relationship, I will take that in the absence of the jury.

MR. LITTLEFIELD: I think that Mr. Leeds, your Honor, has already established --

THE COURT: I was wondering whether there is anything additional other than that that you wanted to put in.

MR. LITTLEFIELD: We know that Gluskin was the attorney for Mastercraft and that Goldenberg was involved in the setting up of the merger and the sale of stock. I think we have had that from Mr. Leeds. Mr. Dayon will just say the same thing.

MR. BERGER: Your Honor, there was no such testimony, that Mr. Goldenberg was involved in the setting up of the sale of the stock. But, to the contrary.

MR. LITTLEFIELD: I dispute that. I think that's what Mr. Leeds certainly testified about.

MR. BERGER: Mr. Leeds testified that the sale of the stock was discussed between him and Mr. Gluskin and that

there were legal opinions and he discussed Rule 133. But there was no suggestion --

MR. LITTLEFIELD: I can provide two specific points at least out of my memory when Mr. Goldenberg was involved with Mr. Gluskin and Mr. Leeds in the sale of the stock.

THE COURT: Is there anything additional that you want to put in through this witness?

MR. LITTLEFIELD: No, your Honor. I think that what he will say will just be essentially what Mr. Leeds has already said. I think it will come in during the course of his testimony.

THE COURT: Shouldn't that be established before we admit the statements, that the deal has already been completed?

MR. LITTLEFIELD: No. I think it is taken subject --

THE COURT: I don't want to take something subject to connection on a matter like that that it will be so prejudicial that to ask the jury to disregard it will be almost impossible

MR. LITTLEFIELD: I think we have sufficient -THE COURT: You are satisfied that you have sufficient
in here to establish it?

MR. LITTLEFIEID: That's correct, your Honor. I
would be glad, we could call Mr. Dayon out, if you want to -THE COURT: It is up to you now. It is your case to

2 try.

MR. LITTLEFIELD: I am satisfied that you, the Court, since this is a finding for the Court, to find that a preponderance of the evidence, a fair preponderance indicates that there was a joint venture relationship among them all in connection with these transactions, the four of them.

THE COURT: I am not looking for joint venture I suppose in principle; rather agency. Have you looked at the section of the rule that I referred you to?

MR. LITTLEFIELD: Yes, your Honor, I have.

THE COURT: I think if anything it comes in under that rather than under E. I think under E it is not admissible.

MR. LITTLEFIELD: I think perhaps that they both combine with this line of cases --

THE COURT: They may, but the house note doesn't indicate that E stands for what you say it does. I think it stands for the contrary of what you say it does. That's why I thought that it only came in under subdivision (D) of the preceding subdivision. I wanted to be certain that you felt -- I know there is testimony in here with respect to the relationship among the different parties involved in here, and I am just trying to see whether you think you have got sufficient in there, and you are satisfied with what you have got in the record already, to go shead with it or whether there is anything

additional that you could bring out throw. Dayon. I am not going to try the case for either party, except, on the other hand, I am here as a judge and not just as a traffic cop. To see that things are done, I just wonder if it isn't essential -- maybe not essential, but better practice, to bring out through Dayon whether or not these deals had been completed at the time the statements were made.

MR. LITTLEFIELD: Dayon already testified that he was in Japan, he came back at the end of the year, the papers had all been drawn up, the deal was agreed upon and signed, and thereafter is when those conversations took place.

THE COURT: I guess his testimony was that the papers were all prepared for the signing --

MR. BERGER: Except, your Honor, it is a statement of Mr. Gluskin who was employed by Mr. Dayon. Certainly he was not the agent of Mr. Goldenberg, if we are going to go that route. He was the agent of Mr. Dayon. Mr. Leeds was the agent of Mr. Goldenberg.

MR. LITTLEFIELD: I would only say that agency doesn't exist only in terms of a formal contract drawn up, being an attorney for a particular person. It exists out of the facts of the joint venture relationship and the signing of these agreements that are involved here, your Honor.

MR. BERGER: Your Honor, this is an arm's length.

2 transaction between two corporations --

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THE COURT: Let me bring this jury out to lunch. We will get them back here at 1:30 and then we will resume then. Bring the jury in. Get the exhibits they have. We will talk about it while they are out.

(cary present)

THE COURT: Sorry to have disrupted our usual routine here, but I assure you that it was necessary. We are going to have an early lunch today, we are going out to lunch now. I would expect you back here between a quarter after one and 1:25. I think you will be able to get your lunch a little quicker today. We will resume by 1:25. Have a pleasant lunch. Don't discuss the case.

(Jury not present)

THE COURT: The last paragraph that you quoted me from Judge Hand's opinion in the case that you gave me, in the Pugliese case, 153 Fed. 2nd 497 at 500, in which the last paragraph says, "The declarations of one party to a concerted mutual venture are admitted against the rest on the notion that they are acts in its execution. Insofar as they are such, they are authorized by all and are treated as their admissions." It goes beyond the agency situation, the principal and agency situation.

MR. BERGER: I recall, your Honor, the Pugliese case

was a conspiracy case. I haven't seen it in awhile, but I

THE COURT: The quote that Mr. Littlefield has given to me here says that the notion that the declarations of a confederate is confined to prosecutions for conspiracy has not the slightest basis. That's the preceding paragraph.

MR. BERGER: It is dictum in that case, since that

THE COURT: We will see what happens. If you have got anything in the meantime, all you have to do is call chambers.

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Dayon

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AFTERNOON SESSION

1:40 p.m.

(In open court - jury ot present)

DAYON, resumed. A L

THE COURT: Mr. Dayon, you indicated that Mr. Golden berg had an office in the building where Mastercraft was located, is that correct?

THE WITNESS: Yes. .

THE COURT: Where was Mr. Gluskin's office?

THE WIT ESS: Mr. Gluskin had an office at the

premise

THE COURT: Also at the premises?

THE WITNESS: Yes.

THE COURT: You indicated further that there was a problem of raising money for operating expenses for the operation.

THE WITNESS: We needed additional funds.

THE COURT: What was going to be done?

THE WITNESS: Well, John Gluskin told me that Bernie Goldenberg felt that he could free some stock and get additional funds for the company, but he is going to check it out by going to an attorney to get his opinion on it and get an opinion letter. If that comes about, then he can free the stock and Bernie Goldenberg will sell it.

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1	1h/1f D yon 163		
2	THE COURT: Did he tell you what Goldenberg himself		
3	had said?		
4	THE WITNESS: Only that he will be able to sell the		
5	stock.		
6	THE COURT: He told you that Goldenberg had said		
7	that he would be able to sell the stock?		
8	THE WITNESS: Yes.		
9	THE COURT: That's what Gluskin told you?		
10	THE WITNESS: Told me, and Mr. Farnell.		
11	THE COURT: This was for the purpose of raising money		
12	for the benefit of the corporation?		
13	THE WITNESS: Yes.		
14	THE COURT: All of you were interested, you, Gluskin,		
15	Goldenberg, were interested		
16	THE WITNESS: Farnell.		
17	THE COURT: Farnell, were interested in getting money		
18	for the corporation so that it could operate?		
19	THE WITNESS: Could do the video tape recording.		
20	THE COURT: Any comments, gentlemen?		
21	MR. BERGER: Yes, your Honor. The questions your		
22	Honor just asked		
23	THE COURT: Do you want to do this in the absence		
24	of the witness?		
25	MR. LITTLEFIELD: I could ask the witness a couple		

164 1 Dayon 1h/1f 2 more questions also and direct the Court's attention to the 3 one other area. 4 THE COURT: All right. I think I in the first 5 instance have to resolve whether or not there is whatever we 6 are going to call it, and then it is up to the jury to determine, 7 there is a question of fact for the jury whether such was the 8 case, and if they believe the statements were made, and, in 9 fact, there was an agency, or whatever it may be, that this 10 was in furtherance of the purposes thereof, then it is up to 11 the jury to make that determination. 12 MR. LITTLEFIELD: Right, your Honor. 13 THE COURT: You want to ask some more questions? I 14 think I have to take this first myself. 15 MR. LITTLEFIELD: I agree. I might just point out 16 one area that --17 THE COURT: Go ahead and ask your questions. 18 EXAMINATION BY 19 MR. LITTLEFIELD: 20 Did you see Mr. Goldenberg and Mr. Gluskin together 0 21 in your office? 22 In my office? 23 Q Yes. 24 They were in my office many times. ٨ 25 Describe the circumstances how you saw them together Q

1	1h/1f	Dayon 165
2	Α	Discussing many different things. Most of the time
3	they were	in John Gluskin's office and the doors were locked.
4	Q	Wore you allowed to come in while they were having the
5	conversat	ion?
6	^	No, no. Nobody was supposed to come in when they
7	were talk	ing.
8	Q	The S.E.C. stepped into the sale of the Mastercraft
9	stock in	the summer of 1968, is that right?
10	А	Yes.
11	વ	And stopped the sale of the stock?
12	Д	Yes.
13	C	There came a time when you then went to some
14	lawyers 1	order to try to find out what had happened to all
15	the money	?
16	А	We wanted an accounting. We never got it.
17	Q	Whom did you ask for the accounting?
18	Α	John Gluskin.
19	Q	Who were the lawyers?
20	Α	Barr, Bennett and Fuller.
21	Q	Was there a meeting at the offices of these lawyers
22	at which	Mr. Goldenberg and Mr. Gluskin were present?
23	A	That was later on, in late '68, I think.
24	Q	Did Mr. Goldenberg say anything at that time about
25	the sale	of the stock?

1	1h/1f	Dayon	166
2	А	We had a meeting and	
3		THE COURT: Did Mr. Goldenberg say anything	then about
4	the sale	of the stock?	
5		THE WITNESS: Yes, he did.	
6		THE COURT: What did he say?	
7		THE WITNESS: He said that he had he t	old the
8	attorneys	, I didn't ask the questions.	
9		THE COURT: You were present?	
10	•	THE WITNESS: Yes.	
11		THE COURT: You heard him say this?	
12		THE WITNESS: Yes. He told the attorneys	there
13	that he s	old the stock and got money for John Glusk	in through
14	Superior	Plans.	
15	হ	Did he say anything else?	
16	А	They asked him to try to return the money	back to
17	the benef	it of the company so that they could make a	deal with
18	the S.E.C	. The S.F.C. wanted the money to go back to	o the
19	corporation	on, and that's what they wanted to see hap	pen, so the
20	attorneys	talked to him and he says he will.	
21	Q	He will what?	
22	А	Return the money back to the corporation.	
23	Q	Did he?	
24	A	No, he did not.	
25		MR. LITTLEFIELD: I have no further quest:	ions of Mr.

	1/2a
1	lh/lf Dayon 167
2	Dayon at this point on this subject. I have one other piece of
3	evidence that I think the Court will
4	THE COURT: Mr. Berger, do you have anything?
5	MR. BERGER: Yes. your Honor, I do.
6	THE COURT: Incidentally, this was done after the
7	merger had been completed?
8	THE WITNESS: Oh, yes, yes.
9	EXAMINATION BY
10	MR. BERGER:
11	Q Mr. Dayon, do you recall testifying before Internal
12	Revenue on August 8, 1972, with regard to an income tax
13	investigation of Bernard L. Goldenberg?
14	A Yes.
15	Q You just testified that Mr. Goldenberg was present
16	at a meeting at your attorney's office along with Mr. Gluskin,
17	is that correct?
18	A And Mr. Farnell.
19	Q Were you asked those questions were you asked
20	about that meeting by Mr. Digricoli, who was a Special Agent
21	of the I.R.S.?
22	A I don't recall that gentleman's name, but I was
23	asked many questions, it was many hours.
24	Q At the time that Mr. Gluskin said he gave the money
25	to Mr. Goldenberg, was that at a time when you were making

	173a
1	lh/lf Dayon 168
2	claim on Mr. Gluskin for the money?
3	A Yes. Afterwards.
4	Q That was a time when you were demanding an account-
5	in and that he give you the money, is that correct?
6	A He promised to give us an accounting and never did.
7	Q At that time he said, "I gave the money to Golden-
8	berg," was that the first time he ever told you that?
9	A No. He told me that he gave money to Goldenberg,
10	you know, a percentage of the amount.
11	Q And he told you that at the attorney's office when
12	you asked for the accounting?
13	A When I asked for an accounting, he told me a
14	big percentage of the money went to Mr. Goldenberg.
15	Q And that he bought debentures with it, isn't that
16	correct?
17	A He told me at the lawyer's office that he bought
18	debentures, later on.
19	Q And that if Goldenberg would give him back the money
20	he would give it to you, is that correct?
21	A Give it back to the corporation.
22	Q Do you recall the date of that meeting at the
23	attorney's office?
24	A No, I don't, offhand, but it was late in'68.
25	Q At that time there were already problems, were there

1h/1f Dayon 169 1 not? 2 A Yes. 3 Q At that time were Gluskin and Mr. Goldenberg still talking to each other? 5 6 I would say they weren't too friendly. 7 Q They had a difference of opinion, is that right? 8 Yes. A 9 Q At that time Mr. Gluskin was saying a lot of nasty 10 things about Mr. Goldenberg, wasn't he? 11 Well, they weren't getting along. 12 MR. BERGER: Your Honor, I think that my examination 13 just now, showing the circumstances under which the statement 14 was made, is indicative of the fact that it was not an agency 15 type of statement but that it was a self-serving statement on 16 the part of Gluskin to show what he did with the money. 17 THE COURT: I think that goes to what weight the jury 18 is going to give to it, not to its admissibility. 19 MR. BERGER: Then I raise the objection on the fact 20 that --21 MR. LITTLEFIELD: Also, I thought this was a state-22 ment by Goldenberg initially, and now the questioning has been 23 about a statement by Gluskin, so there may be some confusion 24 between the two.

25

BY MR. BERGER:

	1	lh/lf Dayon 170
	2	Q You didn't tell Agent Digricoli that Mr. Goldenberg
	3	made that statement, now, did you?
	4	I don't know if he asked me.
	5	MR. BERGER: I offer in evidence as defense
	6	MR. LITTLEFIELD: That's 3513.
	7	MR. BERGER: Defendant Goldenberg's Exhibit A.
xxx	8	(Defendant's Exhibit A marked for identification.)
	9	MR. BERGER: Offered.
	10	MR. LITTLEFIELD: No objection, for the purposes
	11	of this hearing. In fact, the Court has a copy
	12	THE COURT: No, the Court doesn't get those any more
	13	from the U.S. Attorney. They never supply me with 3500.
	14	MR. LITTLEFIELD: I have it right here.
	15	THE COURT: That's a good place for it, right in you
	16	market basket.
	17	MR. LITTLEFIELD: Let me hand all of the 3500
	18	material up to the Court.
xxx	19	(Defendant's Exhibit A was received in evidence.)
	20	BY MR. BERGER:
	21	Q Did you tell the hearing officer, Mr. Digricoli,
	22	that Mr. Goldenberg told you that he received the money at
	23	that meeting?
	24	A I don't recall that.
	25	Q I point your attention to page 8, which is your

lh/lf 1 Dayon 171 testimony, and ask you to see if you can refresh your 2 recollection, from here on down, whether Mr. Goldenberg 3 stated that or Mr. Gluskin stated it. 5 (Pause) 6 Yes. At that meeting. 7 But who stated it? 8 Here it says, Mr. Gluskin said that he paid Bernie .9 Goldenberg \$500,000 for what?. Never knew about the 10 figures exactly or even approximately. We had met with . 11 attorneys Barr, Bennett and Fuller. 12 "Present was Jack Bennett, Jim Farnell, John Gluskin 13 and Bernard Goldenberg and myself and another attorney. Any-14 way, this is the time when John Gluskin said he gave Bernie 15 about \$500,000 and that if Bernie Goldenberg gave back the 16 money to the corporation he will give back the money and give 17 a complete accounting to the corporation." 18 Q What else did Mr. Gluskin tell you then? 19 At that meeting? 20 0 Yes. Continue reading. 21 "What do you mean by that? 22 "John Gluskin said he already gave Bernard Goldenberg 23 \$500,000 and Bernie Goldenberg would give this money back to 24

Mastercraft, he will also give back the balance of the amount.

What is Mr. Gluskin giving back?

!	1//a
1	lh/lf Dayon 172
2	"The difference of around five or six hundred thou-
3	sand dollars, according to the figures."
4	Q And did Mr. Gluskon at that meeting tell you the
5	manner in which and why he gave Mr. Goldenberg the money?
6	He gave him he said he gave him the money for
7	selling the stock.
8	Q Will you continue to read, Mr. Dayon?
9	A "Why did he give him this money?
10	"In my opinion Goldenberg made the market; John
11	Gluskin couldn't"
12	Q That was your opinion. What did Mr. Gluskin say?
13	A "Because he had power of attorney and had the stock
14	in his possession."
15	Q Do you want to continue to read?
16	A "So in your opinion they needed each other?
17	"Yes.
18	"And 500,000 that was given to Mr. Goldenberg was
19	Mr. Goldenberg's cut?
20	"My attorney's opinion is that they were partners" -
21	Q Let me stop you there. So, so far, Mr. Dayon, you
22	have not testified that Mr. Gluskin told you this. This was
23	your opinion, so far. Will you continue to read?
24	MR. LITTLEFIELD: You mean that Mr. Goldenberg had
25	told him?

Mr. Goldenberg from a company by the name of Superior Plans,

which was owned by Mr. Goldenberg, and that they could be worth

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	179a
1	lh/lf Dayon 174
2	"a lot of money."
3	That's what Mr. Gluskin said.
4	MR. BERGER: No further questions.
5	THE COURT: Anything further?
6	MR. LITTLEFIELD: No, your Honor.
7	THE COURT: I am going to permit the testimony to
8	be given by this witness. Do you want any limiting instruction
9	on it at this time, M Berger?
10	MR. BERGER: Your Honor, I object to it. I have
11	already stated my grounds. Of course, I also would request a
12	limiting instruction.
13	THE COURT: In what form do you wish me to give a
14	limiting instruction?
15	MR. BERGER: That the jury can only take this testi-
16	mony into consideration if they determine that Bernard Golden-
17	berg was guilty in the Mestercraft fraud trial. That's the
18	only limiting instruction I can think of, your Honor, because
19	that's the only way I can
20	THE COURT: I don't think that that is adequate,
21	and I would refuse to charge in that language. There is no
22	other limiting instruction you wish me to give them?
23	MR. BERGER: The only other limiting instruction I
24	can think of, your Honor, would be that the jury must believe
25	that there was a conspiracy or joint venture with a criminal

purpose between Mr. Gluskin and Mr. Goldenberg and Mr. D yon,

1h/1f

Dayon

they must believe that beyond a reasonable doubt, and that that conspiracy or that criminal purpose was to manipulate the stock of Mastercraft Electronics, and if they believe that beyond a reasonable doubt, then they can consider the statement made by Mr. Gluskin to Mr. Dayon as part of the evidence in this case against Mr. Goldenberg, and, of course, I would say at that time we are going right back to the problem of the fact that Mr. Goldenberg has been found not guilty in that case.

THE COURT: No, I don't think that that -- I refuse

to instruct the jury at this time in that way. Do you have anything else? I tell you what I had in mind, frankly, to instruct the jury that if they should find that there was an agreement amon; these people, Mr. Gluskin, Mr. Goldenberg, the witness and others, and that the statements that were made or if, in fact, these statements were made, they were made to further that agreement, then they may consider the statement against every person whom they find to be a member of that enterprise, if done in furtherance of that enterprise.

MR. BERGER: I think that we would have to define the agreement and the enterprise.

THE COURT: That's what he is going to testify to, is the agreement to try and raise money for Mastercraft by the

lh/lf Dayon

sale of the stock. That is what he testified to before me and I assume that that is what you are going to bring out before the jury, Mr. Littlefield.

MR. LITTLEFIELD: Yes. your Honor.

MR. BERGER: I renew my objection --

THE COURT: I understand. In view of the fact that

I will not give the other instructions that you have requested,

is this --

MR. BERGER: Without waiving --

THE COURT: You don't waive that, is the intended instructions I intend to give acceptable to you or do you want it modified in any way? You are not waiving anything by it. I am just trying to get an instruction in what I see the law to be in a way that is satisfactory to you, since the other parts are not satisfactory.

MR. BERGER: I feel there should be some definition of the agreement that the parties had entered into and its purpose, and unless we can have that, then the jury has nothing to go on. In addition to that, I again move to dismiss the case now based upon double jeopardy.

THE COURT: The only other addition that I would add to what I was going to charge before, if you want me to, is I don't know how much Mr. Littlefield is going to bring out of what came in in connection with your cross examination of this

	102a	
1	lh/lf Dayon 177	
2	witness, but, of course, once there has been a falling out,	
3	I believe that's the end of the enterprise, and any statement	
4	thereafter made are not admissible.	
5	MR. BERGER: Your Honor, it seems that there was a	
6	falling out.	
7	THE COURT: Not at the time that we are now talking	
8	about.	
9	MR. BERGER: At the time of the statement, your Honor.	
10	THE COURT: I don't believe so.	
11	MR. LITTLEFIELD: He has not been asked to testify	
12	yet about the statements in February and March. We are talking	
13	now about	
14	THE COURT: Exactly. You are talking about statements	
15	later on. If they are not brought in in any way, then there	5
16	is no reason to make any statement about them.	
17	MR. BERGER: If there was no statement outside of the	4
18	one that we just discussed, then that would be a falling out	
19	and that would not be admissible.	
20	MR. LITTLEFIELD: There are statements. That's what	
21	his testimony is all about.	
22.	MR. BERGER: Let's see if there are statements, then.	
23	MR. LITTLEFIELD: That's what he is going to do when	the
24	jury gets back.	
25	THE COURT: That is what he is going to develop now.	

1h/1f 1 Dayon 178 Once there is a falling out, then that is the end of the joint enterprise and any further statements -- first of all, I am 3 not going to admit them. Once he states that there has 4 5 been a falling out, I will sustain an objection to any further 6 statement about that, Mr. Littlefield. You would expect 7 that, wouldn't you? 8 MR. LITTLEFIELD: I haven't explored with Mr. Dayon 9 the extent of the falling out, your Honor. I agree that the 10 defendant would have - if the defendant can show -- I think 11 it is the defendant's burden to show that the agreement is 12 ended, and if he were to show that the agreement had ended, 13 then, yes, no statements would be in furtherance of the 14 agreement. 15 MR. BERGER: I think I can show that through this 16 witness, though, your Honor. 17 MR. LITTLEFIELD: It is not clear that I am going to 18 go into that later. 19 THE COURT: You are not going to elicit statements 20 after the fallin; out anyway, are you? You are not intendin; 21 to? 22 MR. LITTLEFIELD: No. 23 THE COURT: Let's have the jury in. You reserved 24 your rights, but you want me to instruct them right at the

beginning before the witness testifies, because we haven't

184a 1h/1f 1 Dayon 179 established --3 MR. BERGER: Yes, your Honor. MR. LITTLEFIELD: You might as well instruct them 5 now. 6 THE COURT: I will instruct them now. There is 7 sufficient actually, and I had the court reporter spend most 8 of his and our lunch hour reviewing some of the testimony, 9 there might be sufficient in the record already for me to 10 permit any statement, but I think you ought to develop it a 11 little further as we have done here with respect to the agency 12 aspect or the joint enterprise aspect. 13 MR. LITTLEFIELD: The main proof on that, your Honor, 14 aside from the testimony of Mr. Leeds and Mr. Dayon, is the 15 fact that Mr. Gluskin then paid all these checks. 16 THE COURT: There may be enough in the record. I 17 wanted to be overly cautious about it because I think it is 18 a crucial point. 19 MR. LITTLEFIELD: I agree, your Honor. 20 THE COURT: I think we have all spent a lot of time 21 on it, at least we spent a limited time but I think we did a 22 lot of work in a limited time and tried to arrive at this 23 point where I have made a judgment and I believe under the

rules of evidence that it is admissible. We have spent a lot

of time on it. I think it is crucial to what we have got in

Dayon

circumstances.

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here. If I didn't think I were correct, I wouldn't allow it in. I feel that right or wrong, it is permissible under these

(Jury present)

THE COURT: Members of the jury, the main portion of my instructions on the law will be given to you at the conclusion of the case. However, sometimes during the progress of the trial it becomes necessary for me to give you some preliminary instructions and I am about to do that now. With respect to this witness' testimony, I want to charge you a proposition of law. If you should find on the evidence adduced in this case that certain persons, including among them the defendant on trial here before you, were members of a joint enterprise, an enterprise in which they were jointly interested in its outcome and in its success, if you should find that any member -- if there was, in fact, such an enterprise, then any statement made by anybody found by you to be a member of that enterprise in furtherance of the enterprise may be admissible as against all others found to be members of that enterprise. That's a question with respect to a joint enterprise, in addition to which, of course, you would have to find that, in fact, certain statements were made. If you find that no statements were made, even though there may be testimony that statements were made, if you find that no such statements were

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1 1h/1f Dayon 181 made, then, of course, you don't have to go any further. If 2 3 you do find that statements were made, then they are binding on everybody found by you to be a member of that enterprise - 4 5 during the progress of that enterprise. Once that enterprise 6 comes to your mind as having terminated by the actions of the 7 members thereof, by not having further joint interests, then 8 anything said thereafter is not binding upon anybody other than 9 the person who made them. 10 Mr. Berger, is that satisfactory under the conditions 11 that we had before? 12 MR. EERGER: Yes, your Honor. 13 THE COURT: Satisfactory to you, Mr. Littlefield? 14 MR. LITTLEFIELD: Yes, your Honor. 15 DIRECT EXAMINATION CONTINUED 16 BY MR. LITTLEFIELD: 17 Mr. Dayon, when we stopped before lunch I had asked 18 you whether there was a meeting at Mastercraft about raising 19 money, and you had testified that there was a meeting after you 20 got back from Japan, is that right, sometime in the beginnin, 21 of '68? 22 In January, yes. 23 I had asked you who spoke at that meeting, and you Q

A Mr. Gluskin, Farnell was there, I was there, I believe

said Mr. Gluskin, is that right?

24

able to get some money through selling stocks, but he is going to check with an attorney. The attorney was an S.E.C. attorney, and if he gave him a way to free the stock, he will let us know. It took him about four weeks, three, four weeks before he came back, he had a few meetings with this particular attorney, and he came in with a letter and showed it to Jim Farnell, I wasn't there, I came in a little later on, that the stock would be freed and no problems. So John Gluskin says, "Now that the stock, you know, legally could be freed, Bernie Goldenberg will sell the stock and get a percentage."

185

Did he say what would happen to the proceeds from the sale of the stock?

- To go to the benefit of the company.
- Anything else? Q

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A percentage would go to Bernie Goldenberg.

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1	lh/lf Dayon-Direct 183
2	Q Did he say why the percentage would go to Bernie
3	Goldenberg?
4	For being able to sell the stock.
5	Did he say what percentage, do you recall?
6	A 25 or 30. I don't recall.
7	Q Did you discuss where the money would be deposited
8	that was received from the sale of the stock?
9	A Originally they were talking among themselves, the
10	two attorneys, Leeds and Gluskin and Mr. Goldenberg, so they
11	decided that the funds will go to Mr. Leeds and then will
12	be sent in to Dommerich, Chemical Bank.
13	Q That was the factor for Mastercraft?
14	A Right.
15	O Did there come a time when Leeds withdrew, when he
16	couldn't do it any more or didn't do it?
17	A Yes.
18	Q Then where were the funds to be deposited?
19	A Then John Gluskin told us, Jim Farnell and I, that
20	he will be now handlin; the funds.
21	Q Did he say where the funds would be deposited?
22	n No.
23	Q What kind of an account?
24	A His own personal account.
25	Did he tell you why the funds would be deposited in

1 1h/1f Dayon-Direct 184 a personal account of his instead of an account of the 2 3 company's? A That's the arrangements they made originally, that 4 Leeds would have the checking, and then when he went away, 5 6 they decided to give the money to John Gluskin. He will give it 7 to the corporation and to the gentleman that had to get some 8 money from him. 9 C Who was that? 10 Like Farnell and Dweck and Barker -11 Those were the employees whose stock was going to 12 be sold? 13 A Yes, and he would pay them the money. 14 What happened at this point in connection with the 15 selling of the stock? 16 The stock was being sold. 17 Did you have a meeting with Gluskin? 18 No. It's already been, you know, they got the letter 19 from the attorney that freed the stock, and the stock was 20 sold and the money was given to Dommerich, a portion of it, and 21 he was supposed to give us an accounting every month. 22 Did he tell you about the selling of the stock, how 23 it was being sold, or anything? 24 A He said Bernie Goldenberg was handling the selling 25 of the stock.

1	1h/1f	Davro	n-Direct			185
2	<u>۾</u>	What did he to	ell you he	e was doing	with the	money,
3	if anythi	ng?				
4	Α	He would be go	etting the	e money, Jo	hn Gluskir	٦.
5	Q	And doing wha	t with it	?		
6	A	P ying it out	to the er	mployees an	d to Berna	erd Golden
7	berg.					
8	Q	During the ti	me that th	ne stock wa	s sold, di	id you
9	travel in	this country	to any, sho	ows to demo	nstrate th	nis
10	machine?					
11	A	Yes, I went to	Chicago	and to the	Americans	Hotel
12	in New Yo	rk.				
13	Q	Did you also	travel du	ring the sp	ring of 19	968 to
14	Japan in	connection with	n this bus	siness?		
15	۸	Yes.				
16	Q.	Where did you	go specii	Cically in	Japan?	
17	A	I went to Nago	oya where	the factor	y was maki	ing this
18	particula	r product.				
19	Q	When was that	, approxim	nately?		
20	A	I think it was			April-May	
21	Q	What happened				
22		I found out who				
23	A					
24		g given to any			arnell nev	ver got
25	one, Bark	r never got a	account	ing, and		
20	Q	So what did y	u do?			

1	lh/lf	Dayon-Direct 186
2	А	I asked Jim Parnell, I said, "Jim, why havan't you
3	been gett	ing an accounting?"
4		He said, "He gives me double-talk and wouldn't give
5	те вгу ас	counting."
6	0	Who gives him double-talk?
7	٨	John Gluskin.
8	ચ	At this time did Mr. Goldenberg have an office in
9	Mastercra	ft?
10	A	Yes.
11	Q	Did Mr. Gluskin have an office in Mastercraft?
12	Α	They both had an office in Mastercraft premises.
13	Q	Was Mr. Goldenberg also working for Mastercraft in
14	a differe	nt capacity?
15	Α	He was working on mergers and acquisitions and
16	products,	but nothin; too much developed.
17	Q	Did you confront Mr. Gluskin about asking for an
18	accounting	r?
19	А	Jim Farnell and I, myself, many times asked him
20	for an acc	counting.
21	Q	What happened?
22	A	We had words said and never got any amounting.
23	Q	At this point had you ever heard of a corporation
24	called Su	perior Plans?
25	Λ	Later on.

1	lh/lf	Dayon-Direct	187
2	C:	At this point did you know anything about	1t?
3	A	What month?	
4	Q	When you came back from Japan.	
5	Α	Maybe so. I don't believe, you know, but	my
6	recollect	on is that it was later on when I went to	the attorne
7	office that	et I was told about Superior Plans.	
8	Q	Do you recall - when did you go to the att	orneys'
9	offices?		
.0	А	I would say around August, July, August.	July,
1	I think is	t was July.	
2	,	Before that, you are not sure whether you	heard of
13	Superior	Plans?	
14	٨	I am not sure.	
15	Q	What happened then when you got back from	Japan,
6	you asked	for an accounting and you didn't get an ac	counting?
7	Α	Well, we had a lot of words exchanged, you	know,
8	I demanded	it. Jim F rnell demanded it. We talked	many
9	times with	John Gluskin but never got heads or tails	. The
20	only thing	g he gave us is the accounting that he gave	Dommerich,
21	which was	verified anyways through Dommerich's state	ment,
2	but never	gave us any accounting of the funds that h	e received
23	himself.		
24	Q	Did you ever authorize the money to be tur	ned over
25	to Superio	or Plans?	

16/16			- 00
111/11		Dayon-Direct	188
	Α	Authorize?	
	,	Yes.	
	Α	I knew a percentage was going to Bernie Gold	lenberg,
but 1	d1dr	't know how much money or dollars. He would	never
give	me ar	accounting. How could I know?	
	Q	Did you authorize money to be paid to Superi	lor
Plans	1?		
	A	Not to Superior Plans, but to Bernard Golder	nberg.
That	s the	e deal that John Gluskin made.	
	Q	Did your company ever receive any interest of	n
money	give	en to Superior Plans?	
	Α	Not to my knowledge. I definitely don't the	lnk so.
	Q	Were you ever told about debentures in conne	ection
with	Super	fior Plans in Mastercraft?	
	Α	Later on John Gluskin told us that there wer	re
deber	tures	s supposed to be given to Mastercraft. I have	ve never
seen	them.		
	Q	Did you ever see whether there was any inter	rest
paid	on th	ne debentures?	
	Α	Never received any interest.	
	Q	In connection with the video tape machine,	was it
ever	deve	loped that you could manufacture it and sell	1t
succe	essfu]	lly?	
	Α	It was developed, yes. Up to a point.	
	but 1 give Plans That' money with deberseen paid	A but I didn give me an Q Plans? A That's the Q money give A Q with Super A debentures seen them. Q paid on th A Q ever devel successful	Yes. A I knew a percentage was going to Bernie Gold but I didn't know how much money or dollars. He would give me an accounting. How could I know? Q Did you authorize money to be paid to Supers Plans? A Not to Superior Plans, but to Bernard Golder That's the deal that John Gluskin made. Q Did your company ever receive any interest of money given to Superior Plans? A Not to my knowledge. I definitely don't the Q Were you ever told about debentures in conne with Superior Plans in Mastercraft? A Later on John Gluskin told us that there were debentures supposed to be given to Mastercraft. I have seen them. Q Did you ever see whether there was any interes paid on the debentures? A Never received any interest. Q In connection with the video tape machine, we ever developed that you could manufacture it and sell successfully?

194a

1	1h/1f	Dayon-Direct	189
2	Q	Were you ever able to manufacture it and s	ell it?
3	A	We never	
4		MR. BERGER: Objection.	
5		THE COURT: Sustained.	
6	Q	During the course of 1968 were you able to	perfect
7	the video	tape machine so that it could be sold?	
8		MR. BERGER: Objection.	
3		THE COURT: Is it relevant? That's the ba	sis of the
10	objection	, I assume.	
11		MR. BERGER: Yes, your Honor.	
12		THE COURT: I don't see its relevance, Mr.	Littlefield
13	to the iss	sues here.	
14		MR. LITTLEFIELD: Very well, your Honor, I	have no
15	further qu	uestions of this witness.	
16	CROSS EXAM	NOITANI	•
17	BY MR. BEF	RGER:	
18	Q	Mr. Dayon, my name is Mr. Berger. I represe	ent Mr.
19	Goldenberg	g. Have you ever been convicted of a crime	?
20	А	Yes.	
21	Q	What crime was that?	
22	А	For selling for being a conspiracy to se	ell stocks.
23	Q	What stock?	
24	A	Mastercraft stock.	
25	Q	When was that conviction?	

A I don't know what you mean by plea bargaining.

24

25

Q Discussions with members of the U.S. Autorney's to see

1	lh/lf Dayon-Cross 192
2	what you would get, what promises you might be able to get,
3	in exchange for pleading guilty.
4	A My attorney made the negotiations with the attorney.
5	Q Prior to that time you never told the government any
6	of the facts you testified to today, did you?
7	MR. LITTLEFIELD: Objection, your Honor, because
8	there are a lot of facts about which he testified.
9	THE COURT: Sustained.
10	Q Prior to that time you never told the government
11	that Bernie Goldenberg was supposed to get 30 percent of any
12	proceeds realized on the sale of Mastercraft stock, did you?
13	A I don't recall that. I think I told them whatever
14	my attorney asked me to tell them.
15	Q But that was after your attorney had made an arrange
16	ment for you, is that correct? After you decided to plead
17	guilty, is that correct?
18	A I don't know the exact timing of it. But the record
19	shows
20	THE COURT: Was it before or after you pleaded
21	THE WITNESS: I don't recall.
22	Q This accounting that you wanted from Mr. Gluskin,
23	will you please tell the Court and the jury what you were
24	asking Mr. Gluskin to account for?
25	A For the money that they received from the sale of

		1904
1	lh/lf	Dayon-Cross 193
2	the stoc	k which had to go to the benefit of the corporation.
3	Q	Did all of that money have to go to the benefit of
4	tne corp	oration?
5	٨	Except for the funds that were given to the people
6	that owne	ed some part of the stock.
7	Q	What you wanted to know was how much was realized
8	upon the	sale of the stock?
9	٨	How much was sold and where is the money that is
10	supposed	to go to the corporation.
11	Q	Didn't any more go to the corporation?
12	Α	Yes.
13	Q	Approximately how much?
14	А	About \$450,000.
15	Ç.	Do you know how much was sold in stock dollar wise?
16	Δ.	I never got the accounting until we hired the
17	attorneys	, and they received they got the accountings
18	together.	
19	Q	When you got that accounting together, how much were
20	you told	was received for the sale of the stock?
21	A	About \$1,500,000.
22	Q	About how much of that should have gone to the
23	corporati	on?
24	А	Most of it.
05		

What do you mean by most of 1t? What percentage of

. 1	21- /20	2	201
1	1h/1f	Dayon-Cross	194
2	it should	have gone to the corporation?	
3	Α	At least \$1,000,000.	
4	Q	Leaving a balance of how much?	
5	Α	To pay off the boys and the taxes. The	balance.
6	Q	When for the first time did Mr. Gluskin	tell you
7	that he wa	as going to have to give money to Mr. Gol	ldenberg?
8	Д	I don't recall the exact time, but he to	old us many
9	times, Jir	m Farnell and myself	
10	0	When was the first time Mr. Gluskin told	you?
11	Α	I think about February.	
12	Q	February?	
13	Α	Yes.	
14	Q	of 1968?	
15	Α	'68, yes.	
16	Q	And, of course, you told him, "You can't	t do that,"
17	right?		
18	А	No, I didn't say that.	
19	Q	What did you tell him?	
20	٨	I said, "If that's the deal you made wit	th him and
21	he is the	one that got the attorneys to give you	the" he
22		g me that the attorney that recommended	
23		s known by Mr. Goldenberg, and Mr. Golden	
24		that can sell the stock. So I agreed.	
25	only one	So therefore the accounting you we	re in error

1	1h/lf Dayon-Cross 195
2	just now when you testified that your accounting the
3	corporation was entitled to everything except what went to the
4	boys and for taxes, is that right, meaning your employees?
5	No. Later on I never got an accounting until
6	about until the attorneys came in.
7	(But didn't you testify that the corporation was
8	entitled to everything other than the money that was to go to
9	the boys, meaning the minority stockholders, and for taxes,
10	didn't you just say that?
11	I said that, but when my attorneys were hired, the
12	S.E.C. said that all that money had to go to the benefit of the
13	corporation, and that's what they wanted John Gluskin to do,
14	give all the funds for the benefit of the corporation, the
15	S.E.C. and my attorneys, Barr, Bennett and Fuller.
16	Q Did you have a meeting with Mr. Gluskin at that time
17	with your attorneys?
18	A We had quite a few meetings.
19	Q What did Mr. Gluskin tell you that he did with the
20	money?
21	A He told the attorneys. I never asked him that
22	question at the attorneys' office. The attorneys asked him that
23	question. I was present.
24	Q What was his answer?
25	A He gave a certain amount of money to Mr. Goldenberg,

1	16/16	Dawas-Cross	106
	lh/lf	Dayon-Cross	196
2	Superior	r Plans.	
3	Q	For what prupose?	
4	А	He said at that time, debentures.	
5	C	That he had bought debentures, is the	at correct?
6	4	He was supposed to get debentures.	
7	Q	A half a million dollars worth?	
8	А	He didn't say the amount at that time	e, until later
9	on. We	had more than one meeting at the attorn	neys' office.
10	Q	Later on he told you it was a half a	million dollars
11	in deber	ntures?	
12	A	Yes.	
13	Q	Didn't you say to him, "Wait a minute	e. Mr. Gluskin.
14	didn't	you tell me that money was a payoff to (
15		the stock?"	3
16	Λ		Ve never saked
17		He handled the whole thing himself.	
18	my permi	Ission. That's why he never gave me an a	eccounting or
	gave any	rone in my company an accounting, until	later on.
19	Q	Well, now, which was it? Did Glusking	give Bernie
20	Goldenbe	erg the money to pay off for selling the	stock or did
21	he give	him the money to buy debentures? Which	did Mr.
22	Gluskin	say to you?	
23		MR. LITTLEFIEID: Objection to the fo	orm.
24		THE COURT: Rephrase the question.	
25			you that he
	Q	The first time that Mr. Gluskin told	you that he

1	1h/1f	Dayon-Cross	197
2	gave mone	y or had to give money to Mr. Goldenberg,	what was
3	the reaso	n?	
4	Λ.	The first time?	
5	Q	Yes.	
6	A	To pay off to be able to sell the stock	k.
7	Q	And the next time, what did he say the rea	ason was?
8	A	To sell the stock.	
9	Q	And the next time what did he say the reas	son was?
10	А	That he bought debentures at the lawyers'	office.
11	Q	What did you say to him about that contract	iiction?
12	A	We had many arguments.	
13	Q	Didn't Mr. Gluskin say to you that he thou	ight it was
14	a good in	vestment?	
15	Α	He said a lot of things.	
16	Q	Did he say to you he thought it was a good	i invest-
17	ment?		
18	A	That's one of the things he said. But he	never asked
19	me to do	it.	
20	Q	Did Mr. Goldenberg ever go to you and say,	, "Mr.
21	Dayon, I	want to be paid off for selling your stock	'?
22	А	No.	
23	¥	The only one that ever told you that was I	Mr. Gluskin,
24	right?		
25	A	Mr. Gluskin was the only one, at the time,	, yes.

	2038	
1	lh/lf Dayon-Cross	198
2	Q And Mr. Goldenberg wasn't present when Glus	kin said
3	that, was he? He wasn't standing next to him?	
4	A No.	
5	Q And you never went to Mr. Goldenberg and sai	d, "Hey,
6	John Gluskin said you got to be paid off. What's the	story?"
7	You never did that, did you?	
8	A No, I didn't.	
9	Q You are just going on Mr. Gluskin's word, i	s that
10	right?	
11	A Well, yes, on his word, and also the statem	ent that
12	Mr. Goldenberg made at the attorneys' office.	
13	Q Mr. Goldenberg made a statement that he sol	d
14	debentures, did he not?	
15	A Right. And that he would give the money ba	ck to the
16	corporation.	•
17	Q He said, "If I make money, I am going to gi	ve 1t
18	back," didn't he say that?	
19	A No. He said he gave them debentures and th	at the
20	attorneys were talking to him because the S.E.C. and	the U.S.
21	Attorney's office wanted the money back into the corp	oration,
22	he said he will give it back.	
23	Q Goldenberg said that?	
24	A Yes.	
25	Q He admitted a liability?	

		204a	
1	1h/1f	Dayon-Cross	199
2	Α	Yes.	
3	Q	He admitted a debt?	
4	А	Yes.	
5	Q	He admitted it wasn't his money? He admitt	ed that
6	the money	was given to him by Gluskin, right?	
7	Λ	Yes.	
8	Q	For an investment, is that correct?	
9	٨	That's what Gluskin said.	
10	Q	Did Mr. Gluskin tell you sometime back in M	March or
11	June of 19	968 that he gave the money to Superior Plans	for
12	debentures	s, and that they could be worth a lot of mon	ey?
13	A	He said that, but he said a lot of other th	ings,
14	too.		
15	Q	So that in effect Mr. Gluskin told you two	stories,
16	is that co	orrect?	
17	Α	He told me many stories.	
18	Q	But Mr. Goldenberg never told you any story	other
19	than the f	act that John Gluskin bought debentures, is	that
20	correct?		
21		MR. LITTLEFIELD: Objection to the form.	
22		THE COURT: Sustained.	
23	Q	Mr. Goldenberg never said to you, "I got to	be paid
24	off to sel	1 this stock," is that right?	
25	А	He never told me that, no.	
	II .		

Dayon-Cross

Q Are you familiar with a company called Down Communications?

A Yes.

Q Will you please tell the Court and the jury the transaction that was negotiated by Mr. Goldenberg for Master-craft with Down Communications and tell the jury and judge who Down Communications was?

MR. LITTLEFIELD: I. object on relevance.

THE COURT: Yes, outside the scope of the direct.

MR. BERGER: Your Honor, one question that was asked by Mr. Littlefield is what did Mr. Goldenberg do for the corporation, was he in there, did he have an office, what was he doing for the corporation. That was asked by Mr. Littlefield. I am going into that. Mr. Littlefield opened the door.

THE COURT: I am not sure the door was opened that far on the question did he have an office in there.

MR. BERGER: He asked him what he was doing in there.

THE COURT: I will permit it.

- Q Will you please tell the Court and jury who Down Communications was back in 1968?
- A To the best of my knowledge, they had the "Ladies

 Home Journal," "American Home," "Family Weekly," a publishing

	206a
1	lh/lf Dayon-Cross 201
2	company, and many other businesses.
3	Q What transaction did Mr. Goldenberg negotiate on
4	behalf of Mastercraft with Down?
5	A He negotiated two million dollars worth of advertis-
6	ing space.
7	Q In exchange for what?
8	A For a certain smount of stock in Mastercraft.
9	Q In fact, did you use any of that advertising space
10	to advertise any of the products of Mastercraft?
11	A A few.
12	Q Approximately how much?
13	A In dollars?
14	Q Yes.
15	A I would say about one hundred thousand dollars to
16	two hundred thousand dollars.
17	MR. BERGER: No further questions.
18	REDIRECT EXAMINATION
19	BY MR. LITTLEFIELD:
20	Q You testified that both Mr. Gluskin and Mr. Goldenberg
21	had offices in Mastercraft, is that right?
22	A Yes.
23	Q Did you see them together in one or the others
24	office?
25	A Yes, quite often.

1	1h/lf Dayon-Redirect 202
2	Q Did you go in there and talk to them in the office
3	or not?
4	A They had special meetings, they had the doors closed
5	Q I don't understand what you mean.
6	A When they had meetings together, sometimes they would
7	have the doors closed and nobody was allowed to go in there.
8	Q Did you go in and ask them what they were talking
9	about?
10	A No.
11	MR. LITTLEFIELD: I have no further questions.
12	THE COURT: You may step down.
13	(Witness excused)
14	MR. LITTLEFIELD: I will have copies of the chart for
15	the Court and for Mr. Berger.
16	THE COURT: Why don't you first of all turn the chart
17	around until it is admitted.
18	JOHN NAGURNEY, called as a witness on behalf
19	of the Government, having been first duly sworn, was
20	examined and testified as follows:
21	DIRECT EXAMINATION
22	BY MR. LITTLEFIELD:
23	Q . Mr. Nagurney, whom are you employed by and in what
24	capacity?
25	A I am employed by the Chemical Bank as a legal assistant.

1	lh/lf Nagurney-Direct 203
2	Q Your Honor, I show Mr. Nagurney what has been marke
3	as Government's Exhibits 15A through D, E through N, O throug
4	W, X and Y. I ask if you can recognize, and I refer to the
5	original or carbons as opposed to the Xerox copies of these
6	records
7	A These appear to be
8	THE COURT: Do you recognize them?
9	THE WITNESS: Yes, I do, your Honor.
10	Q Just describe what they are.
11	A. These appear to be one form of a multiform deposit
12	slip into a checking account.
13	Q What's the name of the account?
14	A The name of the account is initial H. John Gluskin,
15	and it appears to be a special account.
16	Q Do you have the account number?
17	Yes, I do. It is account number 020-228872.
18	Q Do you want to look through each of those deposit
19	slips or at least the packets of deposit slips?
20	(Pause)
21	A They all appear to be additional deposit slips.
22	Q In that account?
23	A The same account, same person.
24	Q Are these deposit slips or is this part of the
25	multipart deposit slip which the bank has, are these deposit

i	209a
1	lh/lf Nagurney-Direct 204
2	slips made in the regular course of business?
3	A Yes, they are.
4	Q And is it the regular course of business of the
5	bank to retain such records?
6	A Yes, it is.
7	Q Are these records made at or about the time that the
8	transactions which they purport to describe are, in fact,
9	made?
10	A Yes, they are
11	MR. LITTLEFIELD: The government offers Government's
12	Exhibits 15A through 7, your Honor, deposit slips.
13	MR. BERGER: No objection.
14	THE COURT: Received in evidence.
15	(Government's Exhibits 15A through 15Z was received
16	in evidence.)
17	Q I show you what has been marked Government's
18	Exhibit 16 for identification. I ask you if you recognize
19	how many pages are there to 16?
20	A There seem to be eleven.
21	Q Do you recognize what that document is?
22	A These documents represent photocopies of ledger
23	sheets which are the records of an account kept with the bank
24	Q Are those bank statements, would that be what would
25	be sent to the customer?

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- 1		2108	
1	lh/lf	Nagurney-Direct 205	
2	A	These are copies of the statements that would be	
3	sent to t	he customer	
4		What account is that on?	
5	. A	Again it is Mr. H. John Gluskin, special account.	
6	Q	Account number?	
7	Α	020-228872.	
8	Q	These are copies. Have you been able to locate the	
9	originals	or does the bank no.longer retain them?	
10	Α	The bank does not retain originals back that far.	
11	e	I ask you if such bank statements are kept in the	
12	regular co	ourse of business of the bank?	
13	P.	Yes, they are.	
14		THE COURT: Any objection, Mr. Berger? He is going	
15	through th	ne bookkeeping record rule.	
16		MR. BERGER: No objection to its being admitted.	
17		THE COURT: Received in evidence.	
18	1	(Government's Exhibit 16 was received in evidence.)	
19	Q	Can you tell from looking at that or any other	
20	records wh	nen the account was opened?	
21	A	The first ledger sheet dated one moment, please.	
22	The closin	ng date of transactions on this ledger sheet is March	
23	7, 1968.	The openi balance on the same sheet indicates there	
24	was no ope	ening balance, and from that it seems apparent that	
25	the accoun	nt was opened on the date shown by the first deposit dr	,

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lh/lf Nagurney-Direct

this sheet, which would be March 5th of 1968.

MR. LITTLEFIELD: Your Honor, may I point out on these bank statements certain items to the jury?

THE COURT: Are they in evidence?

MR. LITTLEFIELD: Yes, 16.

THE COULT: 16, yes.

MR. LITTLEFIELD: These are the -- the witness has described them as the bank statements for the H. John Gluskin special account. Total amount of deposits on the first one is \$163,275.45. On the next one it is \$303,178.34. On the next one, \$54,963.70. On the next one, \$418,344.52. On the next, \$324,109.97. On the next, \$60,391.57. On the next, \$30,991.74. On the next, \$7,529.95. On the next, \$10,000. On the last, total amount of deposits is zero zero.

Can you tell, Mr. Nagurney, by looking at the last of these sheets when the account had a closing balance or when the account closed at zero zero?

A It appears to be January 7th -- one second, please.

On January 7, 1969, there was a zero balance in the account.

I can't necessarily say the account was officially closed.

Money could have been deposited subsequent to that date.

Q Do you have any records on that or not?

A Last week the branch at which these records are kept made a very exhaustive search for records, and they were

1h/1f 1 Nagurney-Direct 207 2 able to tell me from a card file which they maintain at the branch that the account was closed sometime in 1973. 3 Q I show you what has been marked as Government's Exhibit 17 through C, Government's Exhibit 17D through 5 6 F, Government's Exhibits G through I, Government's Exhibits 7 17J through L., Government's Exhibits 17M through O. 8 Government's Exhibits 17P through R, Government's Exhibit 17S, 9 Government's Exhibits T through V and Government's Exhibit 10 17W, all for identification. I ask you if you recognize them? 11 Last me hold off on 17W. Let's just take 17A through V. 12 The exhibits just presented to me, those are the 13 numbers, all except for 17W, which I was asked to hold off 14 on, are checks drawn on Mr. Gluskin's account. It appears 15 that approximately half of these checks were certified, others 16 went through as regular checks. 17 Could you look through them all and see if they are 18 all payable to the same payee? 19 1. A through F are all payable to Superior Plans, Inc. 20 All of these checks were made payable to Superior Plans, Inc. 21 What is the date on the first check? 17A. 22 17A was dated and certified on March 8, 1968. 23 Are these checks made in the regular course of business 24 of the bank? 25

Yes, they are.

	213a
1	lh/lf Nagurney-Direct 208
2	Q Is it the regular course of business of the bank to
3	make such checks?
4	THE COURT: Do you have any objection to the admission
5	of these checks?
6	MR. BERGER: No objection.
7	THE COURT: All right. Received in evidence.
8	(Government's Exhibits 17A through 17V, inclusive,
9	were received in evidence.) ,
10	MR. LITTLEFIELD: Your Honor, the chart, which is
11	Government's Exhibit 28, is a summary of these checks. I
12	will take the witness through it
13	THE COURT: Did you make a summary of all the items
14	you testified to?
15	THE WITNESS: I will try to, your Honor. May I
16	add one thing? It is the bank's business to process the
17	checks. It is the drawer's business to make the checks. These
18	checks are not made by Chemical
19	THE COURT: You have made a summary of the account
20	which shows the items here?
21	THE WITNESS: Certainly.
22	THE COURT: You have made a summary?
23	THE WITNESS: I haven't yet. I will try to.
24	THE COURT: Mr. Berger?
25	MR. BERGER: Your Honor, I haven't made a summary

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1 1h/1f Nagurney-Direct 209 2 either, and I don't know if it is an accurate reflection, and, in any event, if the witness didn't make it, he shouldn't be the one to testify about it 5 THE COURT: That's right. 6 MR. LITTLEFIELD: I will show him something and if it 7 is wrong --THE COURT: Ir. the meantime we have shown it to the 9 jury. If he made a summary, he can identify the summary from 10 voluminous documents. If he hasn't done it, I don't think 11 that's the way to let it go in. If you want to withdraw the 12 witness and have somebody in who made the chart, that may be 13 the way it has to be done. 14 MR. LITTLEFIELD: I will ask him to step outside, 15 go through the checks and match them against the items on the 16 chart and see if they are the same. 17 THE COURT: Do you have another witness you can put 18 on? 19 MR. LITTLEFIELD: Yes. May the witness be directed 20 to step down, your Honor? 21 THE COURT: You may step down. Do you want to examine 20 at this time before he does that, Mr. Berger? 23 MR. BERGER: No, your Honor. 24 (Witness excused) 25

MR. LITTLEFIELD: The government calls Mr. Kink of

1	lh/lf King-Direct 210
2	the Central State Bank. I want to hand the witness 17W as
3	well, your Honor. He has not taken it outside with him.
4	THE COURT: All right.
5	IRVING A. KING, called as a witness on
6	behalf of the Government, having been first duly sworn,
7	was examined and testified as follows:
8	THE COURT: Mr. King, where do you live?
9	THE WITNESS: 28 Palmetto Street, Brooklyn.
10	THE COURT: What is your occupation?
11	THE WITNESS: Assistant treasurer of the Central
12	State Bank.
13	THE COURT: How long have you been employed in that
14	Capacity?
15	THE WITNESS: Treasurer, about three years. I have
16	been with the bank eighteen years.
17	THE COURT: Go ahead, Mr. Littlefield.
18	DIRECT EXAMINATION
19	BY MR. LITTLEFIELD:
20	Q I show you, Mr. King, what has been marked Government's
21	Exhibit 10 for identification and ask if you can recognize that.
22	A Yes.
23	THE COURT: It is already in evidence, isn't it?
24	MR. LITTLEFIELD: It isn't marked in evidence.
25	THE COURT: It was agreed to be marked in evidence.

		21/8
1	1h/1f	King-Direct 212
2	c	What about original copies of bank statements, what-
3	ever is k	cept by the bank?
4	А	These are original copies from our microfilm records.
5	Q	These records here are original copies from your
6	microfilm	records?
7	٨	Yes.
8	ç	Referring to the bank statements?
9	٨	Yes. ,
10	Q	What about the deposit tickets?
11	А	The deposit tickets, at the time we had copies and
12	these	
13	-	THE COURT: Any objection as to authenticity?
14		MR. BERGER: No objection, your Honor.
15		THE COURT: All right, received in evidence.
16		(Government's Exhibits 19A through 19H, inclusive,
17	were recei	ved in evidence.)
18		MR. LITTLEFIELD: May I hand these to the jury,
19	your Hono	r, these deposit tickets and bank statements, on the
20	account o	f Superior Plans, Inc
21	Q	That's right?
22	A	Yes.
23	Q	What's the address given on the deposit tickets?
24	Α	301 East 48th Street, New York, New York, duplex
25	19D.	

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MR. LITTLEFIELD: Your Honor, we are trying to locate the signature card, Government's Exhibit 11, already in evidence through Mr. Leeds. I want this witness to confirm that this is a signature card filed with the bank.

MR. BERGER: Your Honor, I stipulate -- he doesn't need this witness -- I will stipulate when he finds it that that is it, it can go in.

MR. LITTLEFIELD: May we complete --

THE COURT: Are you finished with this witness?

MR. LITTLEFIELD: He will be a long time. There are an awful lot of checks. He has approximately 100 checks.

Can we finish with Mr. Nagurney?

THE COURT: Yes. Would you step down for a moment?

(Witness excused)

JOHN NAGURNEY, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. LITTLEFIELD:

Q H ve you had a chance to compare these checks which are Government's Exhibits 17A through V and the check which is Government's Exhibit 17W for identification against this chart?

A Yes, I have.

Q Is the chart an accurate representation of what is contained in those documents?

A Yes, it is.

MR. LITTLEFIELD: Your Honor, may I --

THE COURT: Offer it into evidence. Any objection?

MR. BERGER: What is that, the chart, your Honor?

THE COURT: Yes.

MR. BERGER: May I see the chart a moment?

THE COURT: Yes.

MR. BERGER: As long as we redact "Mastercraft Stock Promotion," otherwise I have no objection, your Honor.

MR. LITTLEFIELD: Your Honor, I don't see why that should be redacted. I think that's what the evidence shows.

MR. BERGER: Not from the chart.

THE COURT: Not from the chart, no. This witness can merely testify that these are -- this is a summary of the checks that went through this account.

MR. LITTLEFIELD: From Gluskin to Superior Plans.

THE COURT: That's all. That's all that this
witness can testify to, a summary of those -- whether there
has been other testimony with respect to it, that is something
else again. At least as far as the summary chart, the objection
is taken as to that. We can cover it over or block it out
in some way or other, and Mr. Berger has indicated that that
is satisfactory to him, and he will not raise any other
objection to it as long as that is done.

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MR. LITTLEFIELD: May I cover it over now, your Honor? THE COURT: Yes, fine. Members of the jury, unless somebody needs a recess during the afternoon, we are having a new judge sworn in at 4:15, with a ceremonial occasion. All the judges, if possible, like to attend. Unless somebody objects, I'd like to go right through until ten minutes after four and then suspend for the day. If somebody needs a

recess before, why, you raise your hand and we will recess.

(Pause)

MR. LITTLEFIELD: Mr. Berger?

MR. BERGER: Very good.

MR. LITTLEFIELD: This is Government's Exhibit 27.

THE COURT: 27 is in evidence.

(Government's Exhibit 27 was received in evidence.) BY MR. LITTLEFIELD:

Looking at the checks in front of you, first why don't you explain what 17W for identification is. We will offer that in evidence as well.

17W is an official check, your Honor, on Chemical Bank. There are two copies of the check in front of me, one of which was -- one of which was a copy of the check before it was processed through the various banks it was processed through and one is after it came back to Chemical Bank and the proceeds had been paid.

XXX

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1	1h/1f	Nagurney-Direct	216
2	Q	Copy of the same check, is that right?	
3	А	Yes, same check, at different stages of its	travels.
4	Q	Is this document, this check, kept in the re	gular
5	course of	business of the bank?	
6	Д	Yes, it is.	
7	Q	Is it the regular course of the business of t	he bank
8	to have s	uch checks made and pass through the bank?	
9	۸	Yes.	
10	Q	Was it made at or about the time on which	at or
11	about the	date at which the transaction indicated on t	he check
12	took place	e?	
13	A	Yes, it was.	
14		MR. LITTLEFIELD: The government offers 17W,	your
15	Honor.		
16		MR. BERGER: No objection.	
17		THE COURT: Received.	
18		(Government's Exhibit 17W was received in ev	idence.)
19	Q	Mr. Nagurney, can you take each of these che	
20	telling us	s which letter it is, and pointing out where	
21		n this chart starting with I guess Exhibit A,	
22		THE COURT: Is 17A check number 103?	
23		THE WITNESS: Yes, it is.	
24	Q	What's the date on that check?	
25		March 18, 1968.	
THE RESERVE OF THE PARTY OF THE		merical control of the second control of the	

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1			
1	1h/1f	Nagurney-Direct	217
2	Q	What's the amount of that check?	
3	А	\$25,000.	
4	Q	Can you tell what account that was dep	posited in, in
5	what bank	?	
6	٨	Central State Bank. I can't determine	e a precise
7	account n	umber, but it was Central State Bank, E	Brooklyn.
8	Q	The next check number	
9		THE COURT: Do we have to go through t	his? Why
10	do we hav	e to have this witness describe what is	now a summary
11	that we h	ave for the benefit of the jury?	
12		MR. LITTLEFIELD: We don't, your Honor	, if Mr.
13	Berger ag	rees	
14		THE COURT: It is in evidence.	
15		MR. LITTLEFIELD: But I would want the	witness to say
16	that he r	eviewed it and this is an accurate repr	esentation.
17		THE COURT: That is what the benefit of	of this is. That
18	is why he	didn't object to the chart going into	evidence,
19	because h	e is satisfied that this is so. That's	the concession.
20	The witne	ss indicated that he made the summary.	There is no
21	sense goi	ng through this. It is in evidence. T	he jury can
22	see it.	All he is doing is telling us what is o	n that chart,
23	which we	can see for ourselves by looking at the	chart.
24		MR. LITTLEFIELD: May I just point out	certain
25	aspects o	f it to the jury?	

Nagurney-Direct

THE COURT: You can, if you like, at this particular

MR. LITTLEFIELD: These are the check numbers for

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time. It is in evidence, sure.

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each of the checks that are in evidence, 17A through V, and this last number, 21497, the \$10,000 check, is 17W, I believe.

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Is that correct, Mr. Nagurney?

8

That is correct

9

checks were issued starting the first check on March 8, 1968,

MR. LITTLEFIELD: This is the date on which the

10 11

and the last check is a check on September 5, 1968, which was

12

the last check deposited in the Central State Bank, and on

13

August 5, 1968, the \$10,000 check, Government's Exhibit 17W,

14

which was the last check deposited in the Chelsea National

15

Bank. These bank accounts are the Superior Plans' bank

16

accounts at the Central State Bank and the Chelsea National

17

Bank. The total of deposits from the H. John Gluskin

18

special account at the Chemical Bank, the total amount of

19

checks drawn from that account to Superior Plans and deposited

20

in the Central State Bank account is \$ 0,000, represented by

21

those checks, Government a Exhibits 7A through W, and the

22

total amount deposited in the Chelsea National Bank is \$70,000,

23

for a total of \$540,000 deposited in the Superior Plans bank

24

25

account.

Is that correct, Mr. Nagurney?

	2248	
1	lh/lf Nagurney-Direct 219	
2	A That's correct.	
3	MR. LITTLEFIELD: I have no further questions.	
4	CROSS EXAMINATION	
5	BY MR. BERGER:	
6	Q Can you explain why check 580 is so out of order	on on
7	the check numbers? Is there any way that you can explain	
8	that?	
9	A The only explanation could be that Mr. Gluskin h	ad
10	a large number of blank checks in his possession and just	
11	happened to take one from another pack of checks.	
12	Q Can you be more exact? I don't quite follow.	
13	A For instance, when you get checks from a bank, s	our.
14		a y
15	for instance, you order 100 checks, you can get checks	
	prenumbered, numbers one through 100. In this case Mr. Gl	uskir
16	might have had 600 checks, and he had been drawing on the	
1.7	earlier checks and he might have for some reason only ki. w	n to
18	him decided to have just pulled one off the bottom of the ch	necks
19	rather than off the top, and that would explain the differ	rence
20	in numbering.	
21		
22		
20	A Yes, but they are all prenumbered at the bank.	
.	These checks were numbered checks.	

Do you have any idea as to why the check on June

26, 1968, has been placed after the check of September 15, 1968?

	226a	
1	lh/lf Nagurney-Cross 221	
2	to the jury?	
3	THE COURT: I don't think it is necessary at this	
4	time. It may distract them from what we are going to do, and	-
5	they have the summary of the checks in front of them. They	
6	will have the opportunity to see them at a later time. You	
7	said you are going to be a long time with this next witness,	
8	let's get to it.	
9	IRVING A. KING, resumed.	
10	THE COURT: Mr. King, you are still under oath.	
11	MR. LITTLEFIELD: I believe the jury has Government's	-
12	Exhibit 19, your Honor, the bank statements and deposit slips.	
13	Now I want to show the witness Government's Exhibit 20A	-
14	through 20% and 20AA through 20AZ. I will start by showing	-
15	the witness Government's Exhibit 20A through H.	
16	DIRECT EXAMINATION CONTINUED	-
17	BY MK LITTLEFIELD:	
18	Q I first show you what has been marked as Government's	
19	Exhibit 20A through H. I ask you if you recognize, referring	
20	to this small check number 111 on the top of that page.	
21	A That's a microfilm copy of a check made out to	
22	Bernard Goldenberg by Superior Plans, Inc.	
23	Q What is the total amount of that check?	
24	A \$20,000.	
96		1

MR. BERGER: Your Honor, I am sorry, I couldn't hear

		227a
1	lh/1f	King-Direct 222
2	the witnes	s.
3		THE COURT: He said it is a \$20,000 check made out
4	fron Super	ior Plans, Inc., to Bernard Goldenberg, is that right
5		THE WITNESS: Yes.
6	Q	Can you look through the rest of those checks as
7	well, 20A	through H?
8	A	There are four official checks here, official bank
9	checks.	
10	Q	What are the numbers of those checks?
11	А	3667, 3668, 3669 and 3670, all for \$4,000.
12	Q	Now I show you this check, Superior Plans check
13	number 110	and ask you if you can identify that.
14	A	That's another check made out by Superior Plans to
15	Bernard Go	ldenberg in the amount of \$15,000.
16	8	Is that a microfilm copy of the check?
17	A	That's a microfilm copy of the original.
18	Q	Referring to these other checks, what numbers are
19	on them, c	heck numbers?
20	A	Number 3641, 3642, 3644.
21	Q	Now I show you still Government's Exhibit A through
22	H, number	117, Superior Plans, and ask what that is.
23	A	A check by Superior Plans, Inc., made out to Bernard
24	L. Goldenb	erg, \$15,000. It is a copy of a check from our

microfilm records.

XXX

1	lh/lf	King-Direct 22	24
2	A	The date of the check is March 25, 1968.	
3	Q	What is the amount of the check?	
4	٨	\$20,000.	
5	Q	Can you tell who it is made out to?	
6	А	Bernard L. Goldenberg.	
7	Q	From?	
8	. А	Superior Plans, Inc.	
9		Can you tell what happened to that check after	r
10	it was mad	de out?	
11	А	It is endorsed on the back by Bernard L. Golde	nberg
12	and accord	ding to the notation on the back of the check,	
13	there was	\$4,000 t rned in cash	
14	Q	You will have to speak up.	
15	Α	There was \$4,000 returned in cash and four che	cks
16	for \$4,000	O were bought with the rest of the funds, and i	lt was
17	approved 1	by one of our officers whose initials are A.P.	
18	Q	So that this is & \$20,000 check payable to	from
19	Superior	Plans to Bernard L. Goldenberg on 3/25/68,is th	nat
20	right?		
21	А	Yes.	
22	c	On that same date, March 25, 1968, there are h	NOW
23	many bank	checks made out from to Bernard L. Goldenbe	rg?
24	A	Four.	
25	Q	And that would total \$16,000?	

1	1h/1f	King-Direct	225
2	А	\$16,000.	
3	Q	What happened to the other \$4,000?	
4	А	According to the back of the check, it was	paid
5	out in ca	sh.	
6	Q	So that the \$20,000, what was the disposit	lon of
7	the \$20,0	00, to summarize?	
8	A	\$4,000 returned in cash to Mr. Goldenberg,	according
9	to the ba	ck of the check, and four checks for \$4,000	each were
10	bought wi	th the remainder of the funds.	
11	Q	Were what?	
12	A	Bought with the remainder of the funds.	
13	Q	So that took care of the \$20,000 check from	1
14	Superior	Plans?	
15	Λ	Yes.	
16		THE COURT: Cashier's checks?	
17		THE WITNESS: Yes, four official bank check	s, yes.
18		THE COURT: They indicate to whom they were	peid?
19		THE WITNESS: Payable to Bernard L. Goldenbe	rg.
20		THE COURT: Payable to himself.	
21	Q	Can you tell from looking at them what happ	ened to
22	them?		
23	A	They are all endorsed first by Bernard L. G	oldenberg
24	a.d then t	they have another endorsement underneath tha	t of
25	Irving La	zarus, and an account number, which apparent	ly was Mr.

for \$4,000, 3642 for \$4,000 and 4644 for \$3,000.

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King-Direct

227

THE COURT: What does the back of those checks show? THE WITNESS: One \$3000 one is endorsed by Bernard L. Goldenberg and then it has an endorsement stamp for deposit to the credit of Irving Lazarus, and an account number. The second one just bears Bernard L. Goldenberg's endorsement, that's for \$4,000. The third one bears Bernard L. Goldenberg's endorsement and then an endorsement stamp, "Payable to the order of Irving Lazarus, Royal National Bank of New York," and an account number. That's \$4,000, also.

- The Superior Plans check is for \$15,000, right?
- Yes.
- Can you tell what happened to the remaining \$4,000?
- It is not very clear on the back of the check, but there appear to be some other figures which might indicate that a cash payout --
- What would those figures be to indicate that? In other words, what on the back of the check would indicate a payout of cash?
- Ordinarily the teller makes a notation of the amounts of the denomination of the bills that she pays out in cash. It seems to be - it is very faint on this check.
 - Q The date of those bank checks is what?
 - March 21, 1968.
 - Directing your attention to the next Superior Plans

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Q I show you additional Central State Bank, and I am

stamp and an account number on the back of all three.

	2348
1	lh/lf King-Direct 229
2	going to refer to them by the amount of the check, this
3	would be continuing to be Government's Exhibit 20, I ask you
4	to look at the first check, is this a microfilm copy of a
5	check?
6	A Yes.
7	Q Can you describe that?
8	A It has written at the top, Superior Plans, Inc.,
9	and it is made out to cash, and the amount is \$8,000.
10	Q What's the date on the check?
11	A The date of the check is May 14, 1968.
12	Q Attached to the same check are three bank checks, is
13	that correct?
14	A Yes.
15	Q I show you Superior Plans check number 121 to which
16	are attached two bank checks, is that right?
17	A Yes.
18	Q And I show you the next sheet which has three
19	bank checks attached to it, is that correct?
20	A Yes.
21	Q Numbers 4292, 4293 and 4294?
22	A Right.
23	Q I show you the next sheet which has three more bank
24	checks, 4295, 4297 and 4299, is that correct?
25	

Yes.

1	1h/1f	King-Direct 230		
2	Q	And the next one which has two bank checks, 4300 and		
3	4301, correct?			
4	А	A Right.		
5	10	And the next sheet which has another Superior Plans		
6	check on it, check number 112?			
7	A	Yes.		
8	Q	That is check then there is Central State Bank		
9	check 3679 and 3680, is that correct?			
10	A	Yes.		
11	Q	Were all these checks kept in the regular course of		
12	business of the bank?			
13	A	Yes, they were.		
14	Q	Is it the regular course of business of the bank		
15	to make s	uch checks?		
16	A	Yes.		
17	ć	Are they made at or about the times that the		
18	checks th	emselves indicate?		
19	A	Yes.		
20		MR. LITTLEFIELD: The government offers these checks,		
21	your Hono	r.		
22		MR. BERGER: I am sorry, your Honor. I was conferring	g	
23	with my c	lient. What happened? I don't object to anything		
24	this with	ess is saying or doing.		
25		THE COURT: He is offering some checks in evidence.		

	230a
1	lh/lf King-Direct 231
2	MR. LITTLEFIELD: This is a continuation of Govern-
3	ment's Exhibit 20 with no letters attached to them. Are they
4	received in evidence?
5	THE COURT: They are received in evidence.
6	Q I show you the first sheet, I show you the microfilm
7	check. That is a Superior Plans check, is that correct?
8	A Yes. For \$8,000. Made out to cash.
9	Q Are there attached to that any bank checks?
10	A Yes. Number 4204 or \$2,000, 4205 for \$4,000 and
11	4203 for \$2,000.
12	C For a total of what?
15	A \$8,000.
14	Q What is the date on the Superior Plans check?
15	A May 14, 1968.
16	Q Who is that payable to?
17	A It is payable to cash.
18	Q Who is the endorser?
19	A It is endorsed by Bernard L. Goldenberg.
20	Q Who signed the check at the bottom of the check?
21	A Bernard L. Goldenberg.
22	Q Then there are three bank checks, is that right?
23	Are they on the same date, May 14th?
24	A Yes, they are.
25	Q Can you tell by looking at the Superior Plans check

It is endorsed by Bernard L. Goldenberg, and the check

numbers.

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2 was cashed, it has a notation which indicates that the check was cashed by teller one in Central State Bank, and then it 3 has a list of check numbers which appear to be official check 4 5

Can you read the numbers off the check and see if you find the official check th t goes with it, and it should be right on that sheet as you go along. What's the first check +do it this way. Tell us what the first number is and tell us if there is a check that corresponds to that number, the date on the check, how much the check is, who it is made out out to and where it is deposited, if you can tell by looking at the checks.

The first one is number 4291, May 23, 1968, \$4,000, to Bernard L. Goldenberg.

What happens to that check?

It has Bernard L. Goldenberg's endorsement and Irving Lazarus' endorsement, and an account number, and a bank stamp of Banco Popular.

Next?

The next check is 4292. Number 4292 is also May 23, 1968, for \$4,000, made out to Bernard L. Goldenberg, Bernard I. Goldenberg's endorsement, also endorsed by Irving Lazarus, an account number, and deposited in Banco Popular.

Q Next?

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1	lh/lf King-Direct 234	
2	A 4294.	
3	Q Looking at the back of the check, what's the nex	t
4	one on the back of the check?	
5	A That's the next one on the back of the check.	
6	Q Do you find 4294?	,
7	A Yes. Also May 23, ± 968 , \$4,000, to the order of	
8	Bernard L. Goldenberg, also endorsed by Bernard L. Goldenb	erg
9	and Irving Lazarus and deposited in Banco Popular.	
10	Q Next? So far you have got a total of \$12,000 in	
11	bank checks, right?	
12	A Yes. The next one is 4293, that's here also, al	so
13	May 23, 1968, made out to Bernard L. Goldenberg,	
14	also for \$4,000, Bernard L. Goldenberg's endorsement, endo	rse-
15	mert in account number of Irving Lazarus and a bank stamp	of
16	Banco Popular.	
17	Q Next?	
18	A The next is 4295, also here, also May 23, 1968,	
19	\$4,000, payable to Bernard L. Goldenberg, also endorsed by	
20	Bernard L. Goldenberg, Irving Lazarus endorsement account	
21	number and Banco Popular bank stamp.	
22	Q So that is five checks altogether for \$20,000 so	
23	far, right?	
24	Λ Yes.	
25	O Nove O	

Next?

1	1h/1f	King-Direct	00-
			235
2	۸	Next is 4301.	
3	ć	How much is that and who is it made out to?	
4	A	Also \$4,000 on May 23, 1968, made out to Be	rnard
5	L. Golder	nberg, also Mr. Goldenberg's endorsement, Mr.	Lazarus'
6	endorseme	ent and a Banco Popular bank stamp again.	
7	C	What's the next one, the next number on the	bank
8	of the Su	uperior Plans check?	
9	A	Ine next number is 4297.	
10	·	Can you find the corresponding bank check f	or
11	that?		
12	А	Yes. That's also May 23, 1968, for \$4,000,	made
13	out to Be	ernard L. Goldenberg, endorsed by Bernard L.	
14		zarus, also with a bank stamp of Banco Popula	
15	Q	And the next number?	
16	Α	The next number is 4300, which is also \$4,00	00 on .
17	May 23, 1	968, payable to Bernard L. Goldenberg, also	
18		g's endorsement, Mr. Lazarus' endorsement, an	
19		ank stamp.	
20	Q	So you have got eight now at \$4,000 apiece	for
21	\$32,000,	ri ht?	
22	A	Yes.	
23	Q	What's next?	
4	A	Next is number 4299, also here, also \$4,000,	Mav
25		payable to Bernard L. Goldenberg, Mr. Golden	

	241a	
1	lh/lf King-Direct 236	
2	endorsement, Mr. Lazarus' endorsement, and again Banco	
3	Popular's bank stamp.	
4	So that is nine checks for \$36,000?	
5	A Right.	
*	Q Is there another bank check number there?	
7	A Number 4290.	
8	Q Do you find the corresponding bank check?	
9	A Yes. Also May 23, 1968, \$4,000, Bernard L. Golde	en-
10	berg, Nr. Goldenberg's endorsement, Mr. Lazarus' endorsemen	nt,
11	and again the Banco Popular bank stamp.	
12	Q So that's ten checks, ten bank checks at \$4,000	
13	each, made out on May 23, 1968, all payable to Bernard L.	
14	Goldenberg, is that right?	
15	A Yes.	
16	Q The money to buy those bank checks came from the	
17	Superior Plans account, the check number 121, \$40,000 check	κ,
18	May 23, 1968, payable to Bernard L. Goldenberg, right?	
19	A Yes.	
20	Q Move to the next Superior Plans check, which chec	ck
21	number is that?	
22	A Check number 112, dated Morch 26, 1968, in the an	nount
23	of \$10,000, it is payable to Bernard L. Goldenberg.	
24	Q It is signed by whom?	
25		

Bernard L. Goldenberg.

Q Can you tell by looking at the back of that check
what happened to that?

A It has Bernard L. Goldenberg's endorsement, the initials of an officer, and it says 2900, underneath that it says 100. Then, of course, there is a bank stamp, a Central State bank stamp, also.

Q Looking at the two checks attached to that same check, can you tell what they are?

There are two official checks, number 3679, number 3680. 3679 is for \$4,000 and it is made out on March 26, 1968, to Bernard L. Goldenberg. Number 3680 is for \$3,000, made out to Bernard L. Goldenberg, also Mærch 26, 1968.

Q Looking at the back of those checks, can you tell what the disposition of them was?

A They are both endorsed by Bernard L. Goldenberg, both endorsed by Irving Lazarus, and they both have the bank stamp of Banco Popular.

Q They are the same date as the Superior Plans check?

A Yes.

O From the figures on the back of the Superior Plans check, can you tell what the 2900 and the 100 mean as far as the disposition of that check for \$10,000?

A Subtracting the two official checks, the 2900 and the 100 are the remainder of the check, a total of \$3,000, and

1	1h/1f	King-Direct	238
2	most pro	bably it is a notation that this money was	returned in
3	cash.		
4	Q	Still working on A through H, which are t	he Superior
5	Plans mi	crofilm checks, I now show you microfilm ch	eck number
6	120, and	attached to that are a series of bank chec	ks on three
7	separate	sheets. Were all these checks kept in the	regular
8	course o	f business of the bank?	
9	A	Yes, they were.	
10	Q	Is it the regular course of business of t	he bank to
11	keep suc	h checks and make such checks?	
12	А	Yes, it is.	
13		MR. BERGER: No objection.	
14		THE COURT: They are received in evidence	
15	ς	Will you look at the first Superior Plans	check, is
16	that che	ck number 120?	
17	А	Yes. it is. It is in the amount of \$35,0	00, 1t 1s
18	dated Ju	ne 4, 1968, payable to Bernard L. Goldenber	g
19	Q	Is there an endorsement?	
20	Α	It is endorsed by Bernard L. Goldenberg.	
21	Ç	Can you tell what the disposition of that	\$35,000
22	was?		
23	^	There is a charge ticket which says nine	official
24	checks 1	ssued to Bernard L. Goldenberg, 6/4/68.	
25	,	That's the date of the Superior Plans \$35	,000 check,

What's the next number? That's four at \$4,000 each

23

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King-Direct

240

for \$16,000, is that right?

Yes. The next grouping is 4415, June 4, 1968, \$4,000, payable to Bernard L. Goldenberg, endorsed by Bernard L. Goldenberg and Irving Lazarus, bank stamp of Baco Popular.

Q Next?

1h/1f

A Number 4416, June 4, 1968, \$4,000, Bernard L. Goldenberg, endorsed by Bernard L. Goldenberg and Irving Lazarus, bank stamp of Banco Popular.

Q Next.

The next one is 4417, June 4, 1968, \$4,000, Bernard L. Goldenberg is the payee, endorsed by Bernard L. Goldenberg and Irving Lazarus, again bank stamp of Banco Popular.

Q That's seven times \$4,000, \$28,000, right?

A Yes.

Q Next?

A Number 4418, June 4, 1968, \$4,000, payable to Bernard L. Goldenberg, endorsed by Bernard L. Goldenberg and Irving Lazarus and bank stamp of Banco Popular.

Q Next?

A Next is 4419, June 4, 1968, for \$3,000, payable to Bernard L. Goldenberg, endorsed by Bernard L. Goldeberg, Irving Lazarus, bank stamp of Chelsea National Bank.

Q So we have nine official bank checks totalling eight at \$4,000 each and one for \$3,000 for a total of \$35,000?

1	lh/lf	King-Direct	Olia
			241
2	A	Yes.	
3	e e	Which were issued in return for the	Superior Plans
4	check mad	de out to Bernard L. Goldenberg and e	ndorsed by Berna
5	L. Golden	nberg in the amount of \$35,000, is th	at right?
6	A	Yes.	
7	Q	You have got certain bank checks her	e, is that right?
8	A	Yes.	
9	Q	There are checks 4239, 4238, 4240,	4241, 4242, right
10	A	Yes.	
11	Q	Those are all bank checks made in the	ne regular course
12	of busine		
13	A	Yes, they are.	
14		MR. LITTLEFIELD: Mr. Berger?	
15			
16		MR. BERGER: No objection.	
17		THE COURT: Exhibit 23?	
		MR. LITTLEFIELD: This is still Exh	lbit 20A through
18	H, coveri	ng the first batch of official checks	3.
19	Q	Referring to Government's Exhibit 19	, which are the
20	bank stat	ements for the Central State Bank, as	re you able to
21	find on M	ay 17th a record of a check or other	debit?
22	A	There is a \$20,000 check on May 17th	1.
23	Q	Now look at these	
24	A	A debit, rather.	
25	0	By looking at the bank statement you	see that a

-	
1	lh/lf King-Direct 242
2	\$20,000 debit was made to the Superior Plans account on May
3	17th?
4	A On May 17th, yes.
5	Q 1968. Thank you.
6	Referring to the bank checks, can you describe them to
7	the jury, please?
8	Number 4239, dated May 17, 1968, \$4,000, payable to
9	Bernard L. Goldenberg, endorsed by Bernard L. Goldenberg,
0	endorsement stamp of Irving Lazarus, bank stamp of Banco Popular
1	Q Number 4238, \$4,000, also May 17, 1968, payable to
2	Bernard L. Goldenberg, endorsed by Bernard L. Goldenberg,
3	endorsement stamp of Irving Lazarus, bank stamp of Banco Popular
4	Number 4240, \$4,000, again May 17, 1968, payable to Bernard
5	L. Goldenberg, endorsed by Bernard L. Goldenberg, endorsement
6	stamp of Irving Lazarus, bank stamp of Banco Popular. Number
7	4241, M y 17, 1968, \$4,000, payable to Bernard L. Goldenberg,
.8	endorsed by Bernard L. Goldenberg, endorsement stamp of Irving
9	Lazarus, bank stamp of Banco Popular. Number 4242, May 17,
20	1968, \$4,000, payable to Bernard L. Goldenberg, endorsed by
21	Bernard L. Goldenberg, endorsement stamp of Irving Lazarus,
2	again the bank stamp of Banco Popular.
23	Q So that's a total of five \$4,000 checks payable to
24	Bernard I. Goldenberg on May 17, 1968, is that Fight?

Yes.

lh/lf King-Direct

Q Were you able to locate the source of the debit check on that Superior Plans account for \$20,000 or was that not able to be found in the bank records?

A We couldn't find the original check on the microfilm records, but we did find a debit on the record.

O So you are able to make the estimation, the likelihood is that those five checks drawn payable to Bernard L. Goldenberg relate to the debit of that day, is that right?

A Yes.

MR. LITTLEFIELD: So the exhibit numbering system is clear, 20A through H, each of those related to a Superior Plans check. We had A, B, C, D, E, F, G, H; eight of them, plus the last one which we didn't have a check for. For each of those 20A through H there was the corresponding bank checks.

Now I have Exhibit 20I for identification, which are three bank checks.

Q Once again I ask you to look at the bank statement.

MR. LITTLEFIELD: First let me introduce these checks in evidence. Government's Exhibit 20I, three bank checks, 3602, 3604, 3605, March 19, 1968. Any objection?

MR. BERGER: No objection.

(Government's Exhibit 20I was received in evidence.)

By referring to the bank statement on the Superior Plans account for March 19, 1968, are you able to make a

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1	1h/17	King-Direct 245
2	Α	No. Our records did not have the check on microfilm
3	Q	So you got \$17,000 total bank checks drawn on that
4.	date?	
5	Α	Yes.
6	Q	Are you able to tell what happened to the other
7	\$3,000?	
8	А	Not from the bank checks, no.
9	Q	Have you been able to find out what happened to
10	that other	r \$3,000, whether were there any other bank checks
11	issued	any other bank checks issued on that date?
12	Α	On that date, no.
13	Q	For Bernard L. Goldenberg?
14	А	No, there weren't.
15	Q	Can you tell whether the other money was received
16	in cash or	r not?
17	Α	I really can't say from what I have in front of me,
18	but if no	check was issued, the loney would probably have been
19	give out	in cash.
20		THE COURT: I think this is a good point to break
21	for the da	ay.
22		MR. LITTLEFIELD: Very well, your Honor. There
23	are many m	more, your Honor.
24		THE COURT: We will suspend for today. I hope to
25	resume at	9:30 in the morning. My calendar is very light in

1 1h/1f 246 2 the morning so that our chances are excellent that we should 3 start at 9:30 if everybody is here and present on time. Have a pleasant evening. We will see you at 9:30 in the morning. 5 JUROR NO. 3: Your Honor, may I ask a question? 6 THE COURT: The juror wants to know if I can guess 7 how long this case will go. I would say the early part of 8 next week. 9 JURCE NO. 3: I have a hospital appointment for next 10 Tuesday. 11 THE COURT: I can give you better information 12 tomorrow. 13 JUROR NO. 3: Just asking. 14 THE COURT: Certainly. 15 (Jury not present) 16 MR. LITTLEFIELD: Your Honor, I have given Mr. Berger 17 a copy of the summary sheet for all of these checks together, 18 and I will not hand him a copy of the chart we propose to 19 offer. 20 THE COURT: I can't understand why you didn't 21 use the chart first and then put these records in and then 22 do it that way. 23 MR. LITTLEFIELD: I wanted to get them all into 24 evidence.

THE COURT: They can come into evidence by the summary

easier, by putting the summary chart in. That's the basis for that new rule, to put it in as a summary and then give him the original records, and then if he wants to contest the summary, why, he does it. I certainly think that you are trying the case, I certainly think that it is a lot more effective to have the summary there and then explain exactly what it is and you have an outline of it there. Have you got a summary chart for the balance of this witness' testimony?

MR. LITTLEFIELD: It has the conclusions of the testimony. I think I would have to have the witness, though, describe how he arrived at it because it is the markings on the back of the check which indicate that --

THE COURT: I don't think you need that. You look at that rule again and see whether you need it.

Mr. Berger, do you have any objection to him putting in the summary chart and then you doing --

MR. BERGER: Not at all, your Honor.

THE COURT: That is the way it should have been done. We could have done this in fifteen minutes instead of two hours. The other witness could have been the same. You have him do the summary first and then the checks go in. Then if there is any question about it, Mr. Berger will cross examine him on it. You have the information there. The whole

MR. LITTLEFIELD: Very well, your Honor.

THE COURT: How long do you think you will be now?

MR. LITTLEFIELD: With this witness, then, I should be another half hour, I suppose.

THE COURT: Tomorrow is Thursday. You still expect to rest tomorrow? We can put in a full day. I only have three small conferences in the morning, which, if everybody is here, we ought to start at 9:30, no later.

MR. LITTLEFIELD: The government may well be able to rest tomorrow your Honor. We may well be able to rest tomorrow. There is one area of evidence that I wanted to bring to the attention of the Court. Perhaps I should do that -- the Court has to go. Perhaps we should do it at 9:20 in the morning.

THE COURT: Why don't you gentlemen be here at nine o'clock, nine o'clock in the morning, and we can take that up before the jury comes in. I am usually here before nine every morning.

MR. LITTLEFIEID: I wouldn't think it would take half an hour. I think we could do it at fifteen minutes.

THE COURT: Be here at nine o'clock. That means you will be here at 9:15.

(Court adpurned)

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we are doing here.

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	254a
1	lh/lf 249
2	UNITED STATES OF AMERICA
3	vs. 75 Crim. 385
4	BERNARD L. GOLDENBERG
5	April 8, 1976
6	(In open court - jury not present)
7	MR. LITTLEFIELD: The question of Mr. Gluskin's death,
8	I will ask if Mr. Berger will stipulate to the fact that Mr.
9	Gluskin died. I asked him earlier and he said he wouldn't.
10	I don't know that he seriously meant that he wouldn't.
11	MR. BERGER: Your Honor, I really don't know if
12	Mr. Gluskin is dead.
13	THE COURT: Do you have a certificate of death?
14	MR. LITTLEFIELD: Yes.
15	THE COURT: A certified copy of a certificate of
16	death is admissible.
17	MR. BERGER: I don't know if he is dead.
18	THE COURT: You have a certificate of death, so intro-
19	duce it.
20	MR. LITTLEFIELD: We will do that at the very
21	beginning of the day.
22	THE COURT: I don't care when you do it.
23	MR. LITTLEFIELD: The second thing is that the
24	government renews its motions to introduce the Superior Plans
25	tax returns for at least that year of 1970 when, as the Court

22 23

pointed out, the debentures would have become due, and presumably then -- if anything would have been paid, would have been reflected on the tax returns, or at least circumstantially would be --

THE COURT: What do you have to say about that, Mr. Berger?

MR. BERGER: The defendant will stipulate that they have not been paid.

THE COURT: That should satisfy you.

MR. LITTLEFIELD: With respect to the debentures, but not the second argument which the government has presented and which the Court said it would consider as the evidence went along and as the defendant's contentions become clearer. It seems very clear now that the defendant's contentions are that Superior Plans was a legitimate operation with some hope of doing some sort of business, and the fact that the returns show it did no business and it had no income, it had no assets, it had no loss, it had nothing for the years that the tax returns were filed, and then they didn't file them any more after 1971, which further suggests that that be the case, seems to be relevant to the case at this time, your Honor.

MR. BERGER: I don't think the fact that they had no earnings, they had no income, is probative of the fact that

2 | they did no business.

THE COURT: At least it is arguable. That doesn't go to their admissibility.

MR. BERGER: I feel that we have not gone into anything beyond the fact that in 1969 it was the intention of Mr. Goldenberg to do business. There has been no testimony as to what is -- 1968, your Honor. There has been no evidence as to what his intention was in 169, 170, 171, 172 or any other year.

THE COURT: I think that under those circumstances, I think I will admit them. What else?

MR. LITTLEFIELD: That's the tax return for 1970, your Honor, and the statement from the I.R.S. of no filing for the years after that.

THE COURT: Ye

MR. LITTLEFIELD: The third matter, your Honor, is

I had asked Mr. Berger yesterday whether he would stipulate in

connection with the fact that Mr. Goldenberg had been a fugitive

for ten months after the indictment was filed. I asked him

whether he would stipulate to essentially what I would test y

about, namely that when the indictment was filed, we sent

notices -- the U.S. Attorney's office and the Court sent

notices to Mr. Goldenberg at whatever address we had for him

and subsequently he called me and said that he had received the

notice, and I said -- I said the notice indicated that he

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had to be in court for an arraignment, having been indicted, and he said he understood that, but he asked if he could have a two-week adjournment because he was on the West Coast and he needed time to get a lawyer, he said. I said, "All right, you can have a two-week adjournment if you send me a telegram acknowledging that you have asked for this adjournment and telling us that you will be here in two weeks." He then sent the telegram and never appeared, and we never heard from him again, and we finally tracked him down in California some nine months later. When he was arrested in California, there were all sorts of -- he had a number of records with him indicating that he had been using two or three different names during the course of the time that he had been a fugitive to further emphasize our point, which is that while we were trying to look for him we couldn't find him because he had no address that we knew of, he was using a series of different names, and we finally tracked him down through a series of business contacts. But it took ten months.

THE COURT: What do you have to say, Mr. Berger?

MR. BERGER: Your Honor, quite frankly, I don't know what Mr. Goldenberg bein; a fugitive, if he were a fugitive, has to do with this case. It is not a matter of flight. There was no flight. That's number one. Mr. Goldenberg was at one

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2 address when he was indicted and was at the same address when 3 he was arrested. The government always knew how to contact Mr. Goldenberg, as is reflected in this letter of May 2nd. 4 5 May I approach the Bench with it, your Honor?

THE COURT: Surely.

Mark this for identification.

MR. BERGER: Mr. Goldenberg was hiding so well that in "Millionaire Magazine" in April, 1975, there is a photograph and a write-up about him, showing how he could be reached. Mark this, please.

(Defendant's Exhibit B and C were marked for identification.)

MR. LITTLEFIELD: Your Honor, with respect to this first exhibit, all I can say is that I have talked to this lawyer, I believe his name is Mr. Eichler, a number of times during the course of the summer and he said he wished he knew where Mr. Goldenberg was because Mr. Goldenberg hadn't paid him and he couldn't find him anywhere. We will bring him here to testify to that, if this is going to be an issue. They can put all this in to explain where he was.

MR. BERGER: Your Honor, there was no flight. Ho was at the same place --

THE COURT: If he wants to prove flight and you want to prove there wasn't any flight, that will be an issue.

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Evidently you won't concede that he was a fugitive.

MR. BERGER: Absolutely not.

THE COURT: Mr. Little eld, if you knew that was going to happen, why did you take this case if you were going to have to be a witness? You know that that violates all of the rules.

MR. LITTLEFIELD: Right, your Honor. I had assumed, since all it is is one telephone call --

THE COURT: I shouldn't interrupt you either, but you should not assume anything in the case. You ought to find out before you try a case. If you want to prove it some other way, fine. I don't think it is appropriate for you to take the stand.

MR. LITTLEFIELD: May I explain, your Honor, what my position is on that? Mr. Goldenberg has admitted to the fact that there was this phone conversation with me before Judge Frankel when we had our bail hearing, before Judge Raby, I believe it was, before whom we had the first bail hearing.

THE COURT: Isn't there a record of that? Why can't you read that into evidence?

MR. LITTLEFIELD: If I can find that, I will.

THE COURT: You can read that in. After all, it is a statement or admission by the defendant.

MR. LITTLEFIELD: The point is, I had also assumed

that since it was merely that one phone call, that Mr. Berger would stipulate, since he doesn't contest the fact of the phone call. I am sure he doesn't contest that. Therefore, his refusing to stipulate is purely designed to force me to take the stand and raise this difficult question, is the point, your Honor. It is not an issue - he is making this an issue when, in fact, it is not a contested issue.

out with him beforehand, because there was always the prospect, if he didn't agree with this, that you would have to take the stand, and you knew that beforehand. That being so, all you had to do was ask him if he was going to contest it, get a stipulation in writin; for it. If not, some other lawyer could have tried it for your office. You can get the transcript of the hearing, which ought to be available, of the arraignment before the magistrate, if there is an admission to that effect, why, you don't have to take the stand, do you?

MR. LITTLEFIELD: I will try to get either one of the two transcripts, your Honor.

MR. BERGER: Your Honor, of course, in addition to the fact of whether Mr. Goldenberg was a fugitive or not, fugitive is not the same as flight. The fact that Mr. Goldenberg may not have answered the arraignment and come into Court on the arraignment, if he did not change his location, change his name,

change his identity and actually hide, then, of course, there has been no flight.

THE COURT: I will have to wait for all the proof to come in on that, and whether Mr. Littlefield is going to bring in proof that he changed his name, used aliases during that period --

MR. BERGER: I think that should be done outside of the jury.

THE COURT: I don't know why, if he tells me he is going to present proof to establish that.

MR. BERGER: Then I am going to have to cross examine Mr. Littlefield.

THE COURT: Why are you going to have to cross examine Mr. Littlefield?

MR. LITTLEFIELD: I am not going to say anything about the false names. If I do take the stand, if that's what we come down to, all it will be about is the phone call. The false names come in through the investigators who searched for him.

THE COURT: What are you doing about trying to get the transcript?

MR. LITTLEFIELD: It will take me a minute to look
through my files to see if I have anything in there now which
will -- it is not the next piece of evidence, your Honor, so it.

1	1h/1f
2	won't probably happen this morning, I wouldn't think, anyways.
3	THE COURT: We know where we stand. Anything else?
4	MR. LITTLEFIELD: That was all, your Honor.
5	THE COURT: We are ready?
6	MR. LITTLEFIELD: The government is ready.
7	THE COURT: What are you going to do about the
8	balance of these checks? Have you got a summary of them?
9	MR. LITTLEFIELD: We have a summary, your Honor.
10	THE COURT: Has the witness reviewed the summary and
11	can he say that it is an accurate summary of the checks?
12	MR. LITTLEFIELD: Yes. The summary, your Honor,
13	which we are now going to offer summarizes does your Honor
14	have the copy that I handed up last night, or I can hand up
15	another copy.
16	THE COURT: As long as you are going to do it that
17	way, let's not go through item by item.
18	MR. LITTLEFIELD: Let me explain. We have to go
19	through item by item in some respect because it shows the method
20	of which was designed to conceal.
21	THE COURT: Let's not go through what we did yester-
22	day afternoon.
23	MR. LITTLEFIELD: We won't have to do that.
24	(Recess)
25	(In open court - jury present)

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IRVING A. KING, resumed.

THE COURT: I am sorry for delaying you. I had only three matters on this morning. Usually they would take no more than ten or fifteen minutes, as they usually do, but they ran right until now. I am sorry.

MR. LITTLEFIELD: The first order of business, the government offers Government's Exhibit 32 for identification in evidence. I show that to the Court.

THE COURT: Any objection?

MR. LITTLEFIELD: That's the death certificate.

MR. BERGER: Oh, no objection.

THE COURT: Received.

(Government's Exhibit 32 was received in evidence.)

MR. LITTLEFIELD: May I explain to the jury what this is, your Honor?

THE COURT: You certainly may.

MR. LITTLEFIELD: This is a certified copy of a certificate of death for Harry Gluskin, other names by which decedent was known, H. John Gluskin, and there are certain other information. Date of death, April 18, 1975; sex, male; age, 72.

THE COURT: I don't think you have to go any further.

MR. LITTLEFIELD: Married, attorney --

THE COURT: You don't have to go any further.

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1	lh/lf King-Direct 259
2	MR. LITTLEFIELD: The government offers the chart
3	which we considered last night, of which I gave copies to
4	the Court and defense counsel last night.
5	THE COURT: Any objection?
6	MR. LITT'EFIELD: Exhibit 29. Mr. Berger has a
7	copy
8	THE COURT: Do you have any objection?
9	MR. BERGER: No objection.
10	THE COURT: Received in evidence.
11	(Government's Exhibit 29 was received in evidence.)
12	DIRECT EXAMINATION CONTINUED
13	BY MR. LITTLEFIELD:
14	Q Can you see this chart from where you are seated,
15	Mr. King?
16	A Yes.
17	THE COURT: Why don't you give him a copy of it, too.
18	Q This is the summary of the disposition of the funds
19	deposited in the accounts of Superior Plans, Inc., at the
20	Chelsea National Bank and the Central State Bank. You work
21	for the Central State Bank, right?
22	A Yes.
23	Q You, Mr. King, have verified the figures in this
24	middle column, which are the figures for the Central State
25	Bank, is that correct?

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1 1h/1f King-Direct 260 2 Yes. 3 This first category, Superior Plans checks payable to Goldenberg or cash, yesterday we got through the first 4 5 portion of this, did we not, which are the Superior Plans 6 checks payable to Mr. Goldenberg or to cast which were used 7 to purchase official bank checks payable to Mr. Goldenberg. 8 A Yes. 9 That's all those exhibits that we put in yesterday, 10 where you pointed out the Superior Plans check for a certain amount of money, Superior Plans check payable to Mr. Goldenberg, 12 I think they all were. 13 A .es. 14 The, they were used to purchase --15 Official checks. 16 Official bank checks, also payable to Mr. Goldenberg, 17 is that correct? 18 A Yes. 19 Then you said that they were -- most of them were 20 endorsed on the back by Irving Lazarus underneath the endorsement 21 of Bernard Goldenberg, is that correct? 22 A Yes. 23 0 You don't know who Irving Lazarus is, do you? 24 I know he had an account in the bank. 25 Q You don't know exactly who he is?

266a 1h/1f 1 King-Direct 261 2 No. 3 Q Those checks total \$145,000, is that right? 4 A Yes. 5 There were certain other of these Superior Plans f checks payable to Mr. Goldenberg. Sometimes you pointed out 7 that some of the cash from these checks was not turned back 8 into an official bank check, but you could tell by notations 9 on the back of the check that cash had been issued to Mr. 10 Goldenberg, is that correct? 11 A Yes. 12 That is category three here, is that right? 13 Three. 14 Cash balance received by Goldenberg when part of 15 check was used to buy official checks? 16 Yes. 17 The total there was \$21,000 for Central State Bank, 18 is that correct? 19 Yes. 20 Now we are going to go to the next category, which 21 is category two, and identify those checks which were checks 22 directly cashed by Goldenberg. Superior Plans checks payable 23 to Goldenberg or cash, directly cashed by Goldenberg, and this 24 totaled \$118,790, is that correct?

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Yes.

1	lh/lf King-Direct 262
2	I show you what has been marked as Government's
3	Exhibits 20P through 20Z and 20 AA through 20 AB. I ask you
4	if you can identify those checks, starting with 20P?
5	A 20P is a check for check number 600, made out to
6	cash, and it is \$27,000, a little more than \$27,000, 27,270,
7	it looks to be.
8	Q Twenty-seven thousand two hundred how much?
9	A \$270.
10	Q \$290?
11	A 290.
12	Q What was the disposition of that check?
13	A It is endorsed by Mr. Goldenberg on the back, and
14	according to the back of it there is a cash breakdown which
15	indicates that the funds were given out in cash.
16	Q The next check?
17	A The next check is number 602, and that's on March
18	12, 1968, \$40,000, made out to cash. It is a Superi Plans,
19	Inc., check.
20	Q Who signed the check?
21	A Bernard L. Goldenberg.
22	Q What happened to that check?
23	A It is endorsed on the back by Mr. Goldenberg and it
24	has the initials of a bank officer. It has Central State bank
25	stamp on the back, also.

1	lh/lf	King-Direct 263
2	Q	The next one?
3	Δ	The next one is number 104, made out to cash.
4	Q	What's the date of that?
5	A	That's March 14, 1968, Superior Plans, Inc., check.
6	Q	How much is that?
7	٨	It is for \$5,000.
8	Q	What was the disposition of that check?
9	Α	There is a cash breakdown on the back, endorsement
10	of Mr. Go	ldenberg.
11	Q	Next check?
12	,	Check number 149, Superior Plans, also. September
13	6, 1968,	\$2,000. Mr. Goldenberg's endorsement, and it has a
14	stamp sho	wing that it was cashed.
15	Q	Does it say what the bills were?
16	А	No, because yes, it does. It says 40 times 50.
17	Q	So that is forty \$50 bills?
18	A	Yes.
19	Q	Cashed on that date for that \$2,000?
20	А	Yes.
21	Q	By the way, looking back on that first sheet, check
22	number 60	O, the first check, what was the date on that check?
23	А	The date is March 8, 1968.
24	Q	The amount is \$27,290?
25	А	Yes.

	269a
1	lh/lf King-Direct 264
2	Can you tell what the cash breakdown on that one
3	was?
4	A It says ten one hundred, then it says five one hundred,
5	total of fifteen.
6	Q I am sorry, I missed that.
7	A Ten one hundreds, five one hundreds, then it is totaled
8	as fifteen. Then it is five fift'es, then 20 and under
9	that seven for twenty-seven, it doesn't say the amount, and
10	then it has below that it says 290.
11	Q The check is in the amount of 27,000, right?
12	A Yes.
13	How do we get to 27,000, if you can tell by looking
14	at the check?
15	A I really couldn't tell from the back if it totals up
16	to 27,000.
17	Q You said you had
18	It says 27 over here on one side, on the other side
19	it says 290, which is 27-290, but the figures are separated.
20	MR. BERGER: May it please the Court, if it would be
21	of any help in speeding this thing along, Mr. Goldenberg will
22	stipulate that all of these checks and all of this cash he
23	received.
24	THE COURT: By checks made out by Superior Plans,
25	signed by him and endorsed by him, he received the cash

1h/1f

King-Direct

MR. BERGER: That's right

MR. LITTLEFIELD: Your Honor, I do want to indicate on some of these checks the breakdown of the cash and the disposition of some of them.

THE COURT: Isn't it summarized on here, on the chart?

MR. LITTLEFIELD: It is, but in order to make it absolutely clear, I just want' to make sure it is all in order.

THE COURT: I don't think there is any problem about it being in order. The chart I think is a summary of what is contained in these checks and how it went, isn't it?

THE WITNESS: Yes.

want to show a specific thing on, it is still in evidence and you can do that. But just to go through it again with all these checks to prove not only what the witness has testified is a summary, but what Mr. Berger has conceded to be a fact, that all of these funds did go to Mr. Goldenberg through Superior Plans --

MR. BERGER: Right, your Honor.

MR. LITTLEFIEID: Then I will just go through and pick out certain checks, your Honor. Also, we haven't offered all of these in evidence, but I will now offer all the remaining.

	271a
1	lh/lf King-Direct 266
2	checks.
3	THE COURT: Any objection?
4	MR. BERGER: No objection.
5	THE COURT: That is 20A to AZ.
6	(Government's Exhibits 20A through 20AZ, inclusive,
7	were received in evidence.)
8	Q There are checks in your hands, and check 20M which
9	make up all the checks which were directly cashed by Mr.
10	Goldenberg is that correct?
11	A Yes.
12	Looking at the back of those checks, can you tell
13	us any other cash breakdowns just by thumbing through them
14	quickly?
15	A There is one here for 2,500 on March 29th, which
16	says 700, then it has 2300 1300. It doesn't say if it was
17	tens or what. It just has figures, amounts. Most of the
18	others here is one that has a breakdown.
19	Q Which check number is that?
20	A Check number 119 for \$25,000.
21	Q What is the date of that?
22	A May 31, 1968. It has a complete breakdown, but it
23	is very illegible.
24	Q Can you make a best estimate reading?
25	A I can see thousands at the top, 4,000, 4,000, 1t

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1	lh/lf King-Direct 267
2	looks like 4,000 in three different places, but it is not
3	really legible, other than that.
4	Just looking at the cash checks you have in front
5	of you for the month of March, 1968, you have check 600 for
6	\$27,000 on March 8th, check 602 for \$40,000 to cash on
7	March 12th, check 104 on March 14th for 5,000, check 114 for
8	\$2,500 and check 115 for \$3,000 on March 27th and 28th. So you
9	have got a total of some \$80,000 in cash, directly cash
10	checks, in March alone, is that right?
11	Λ Yes.
12	That doesn't include the checks you offered in
13	evidence yesterday?
14	A No.
15	Which were used to buy official bank checks?
16	A No. It is completely apart.
17	Q The next group of checks, 20L through 20N, these are
18	checks that were deposited directly into Mr. Goldenberg's
19	bank accounts, is that right?
20	A Yes.
21	Q In the amount of \$8,800?
22	A Right.
23	Q How can you tell that
24	MR. BERGER: We stipulate to that, your Honor.
25	THE COURT: He says he stipulated

	2/3a
1	lh/lf King-Direct 268
2	MR. LITTLEFIELD: I'd like to indicate where they
3	were deposited, your Honor, what bank accounts.
4	Q This first one for \$2,000 on August 20th, that says
5	for deposit only to the account of Bernard L. Goldenberg.
6	^ Yes.
7	Q What bank is that?
8	That's the Mid-Continent National Bank, Kansas City,
9	Missouri.
10	Q Check number 143 is also deposited in the account of
11	Bernard L. Goldenberg at the Mid-Continent National Bank?
12	Can you tell by the deposit slip if not it is made out to
13	cash, is that right?
14	A Cash.
15	Q Is there a deposit slip for the Mid-Continent National
16	Bank for Bernard Goldenberg a deposit of \$2,000 cash?
17	A There is a credit of \$2,000, yes.
18	Q Referring to Exhibit 20N, this is a check payable
19	to the order of Bernard L. Goldenberg for \$5,000, June 19th,
20	and that's deposited, is it not, in his own bank account
21	where?
22	A It would be at Central State, apparently. Yes.
23	Q His own personal bank account?
24	A Yes. It says deposit in account of Bernard L.
25	Goldenberg, and it has our stamp on the back.
ALCOHOLD TO SELECT	

25

Exhibits 20K are these checks bearing the First

National Bank of San Diego, bank checks made out to Bernard

1	lh/lf King-Direct 270
2	L. Goldenberg, endorsed Bernard L. Goldenberg, and bearing
3	the First National Bank of San Diego?
4	A Yes. Yes, they all have that endorsement.
5	Q I show you the check that is referred to there as
6	Lester Gold in the amount of \$5,000, March 19, 1968, bank
7	check, payable to Bernard L. Goldenberg, endorsed B rnard L.
8	Goldenberg and endorsed underneath it Lester Gold, is that
9	right?
10	A Yes. It has a bank stamp of some national bank in
11	Colorado.
12	Each of these bank checks has beneath it another
13	document. Can you explain what that is?
14	A This is a ledger copy that the bank keeps until the
15	check is paid, and then the check and this ledger copy are
16	put together and filed away. The ledger copy shows from where
17	the funds came to buy that official check.
18	For example, on this one, this check to Bernard L.
19	Goldenberg, underendorsed by Lester Gold, the offset is Superior
20	Plans, is that right?
21	A Yes.
22	Q I now have the Don Moen checks. These are Central
23	State Bank official bank checks payable to Bernard L.
24	Goldenberg, endorsed by Barnard L. Goldenberg, and then under-
25	endorsed by Don Moen, is that right?

		276a
1	lh/lf	King-Direct 271
2	Δ.	Yes.
3	Q	Where are they deposited?
4	А	Guaranty Bank and Trust Company, Denver, Colorado.
5	Guaranty	Bank and Trust Company, Denver, Colorado. Guaranty
6	Bank and	Trust Company, Denver, Colorado.
7	Q	These checks all came out of the offset of the
8	Superior	Plans?
9	A	Superior Plans.
10	Q	I finally got down to this point. Payment to M & G
11	Amusement	, Superior Plans checks payable to others. The check
12	to M & G	Amusement is a \$50,000 check, is that right?
13	А	Yes.
14	Q	That's Superior Plans check?
15	А	Yes, it is.
16	Q	Signed by Bernard L. Goldenberg?
17	A	Yes, it is.
1.8	Q	Can you tell where this is deposited?
19	A	Manufacturer's Hanover Trust Company.
20	Q	Do you know what M & G Amusement Company is?
21	А	No.
22	Q	The next is a bank voucher, is that right, for a
23	payment t	o Go Publishing Company?
24	٨	Yes. This is a certified voucher.
25	Q	For how much?

MR. LITTLEFIELD: There are various individuals --

1	1h/1f	King-Direct	273		
2		THE COURT: You want to show particular ones	3?		
3		MR. LITTLEFIELD: Yes.			
4	q	For instance, the first series of checks			
5	Д	These four checks are all made out to Guido	Benigno.		
6	Q	The total of them is			
7	А	One is 200			
8	Q	The summary chart shows \$2,050. Looking at	the back		
9	of the che	ck, can you tell what happened? Who endorsed	t them?		
10	А	They are endorsed first by Guido Benigno, an	nd then		
11	there is a	nother endorsement of Bernard L. Goldenberg	. Three		
12	of them sh	ow tellers' notation, which means they were	cashed.		
13	The fourth	one just has the two endorsements, doesn't	say if		
14	it was cashed or deposited. But the other three all were				
15	definitely cashed.				
16	Q	It continues to be Guido Benigno, Guido Benigno	igno, Guido		
17	Benigno.	Then two checks payable to another individua	al.		
18	Who is tha	t?			
19	A	Philip Leeds.			
20	Q	What is the total of those two checks?			
21	A	\$623.40·			
22	Q	They are Superior Plans checks, is that right	nt?		
23	А	Yes.			
24	٠,	Signed by Bernard L. Goldenberg?			
25	Α	Yes.			